TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~265~~ 56.

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ISAAC R. TRIMBLE, AND ANN C. TRIMBLE, HIS WIFE, AND GEORGIANA PRESSTMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED JUNE 23, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 240.

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INDEX.

	Original.	Print.
Style of court	1	1
Summons	2	1
Narrative	4	2
Amended narrative	6	3
Pleas	18	9
Replication and issue	19	9
Agreement	20	10
Jury and verdict	20	10
Judgment	21	10
DEFENDANTS' BILL OF EXCEPTIONS.		
Patent of August 3, 1840	22	11
Schedule	23	12
Patent of August 28, 1846	26	13
Schedule	27	14
Patent of 1846, and extension	31	16
Schedule	33	16
Certificate of extension	36	18
Assignment of Howe to Trimble	38	19
Assignment of Stone, administrator, to Trimble	40	20
Deed from Trimble to plaintiffs	42	21
Testimony of James Smith	44	22
Assignment from Stone, administrator, to Daniel Stone	46	23
Agreement between Trimble and Daniel Stone	49	24
Assignment from Shaw to Burton	53	26

	Original.	Print.
Assignment from Stone, administrator, to Burton	55	28
Record, &c., supreme court of Pennsylvania	58	29
Certificate of appointment of Joseph Stone as administrator of William Howe	85	42
Certificate of appointment of Joseph Stone as administrator of Daniel Stone	87	43
Testimony of Isaac R. Trimble	88	44
Plaintiff's prayer	89	44
Defendants' prayers	91	45
Writ of error	95	46
Citation	98	47
Clerk's certificate	99	47

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, (being the second day of the same month,) in the year of our Lord one thousand eight hundred and sixty-eight—present, the Honorable William F. Giles, judge of Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk—among other, were the following proceedings, to wit:

ISAAC R. TRIMBLE, & ANN C. TRIMBLE, HIS wife, & Georgiana Presstman,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company.

Be it remembered that heretofore, to wit, on the 2nd day of April, in the year of our Lord one thousand eight hundred and sixty-eight, the said Isaac R. Trimble and Ann C. Trimble, his wife, and Georgiana Presstman, by Reverdy Johnson, Benjamin C. Presstman, and S. Teackle Wallis, esquires, their attornies, prosecuted and sued forth out of the circuit court here the writ of the United States of America, of summons, directed to the marshal of Maryland district aforesaid, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
2 *District of Maryland, to wit:*

To the marshal for the Maryland district, greeting:

We command you that you summon the Philadelphia, Wilmington & Baltimore Railroad Co., that, all excuses and delays set aside, they be and appear before the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the United States court-house in the city of Baltimore, on the first Monday in April next, to answer unto Isaac R. Trimble, Ann C. Trimble, his wife, and Georgiana Presstman in a plea of trespass on the case, &c. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued April 2, '68.

[SEAL.] JA'S W. CHEW,
Clerk Circuit Court.

At which mentioned first Monday in April, in the year of our Lord 1868, being the day of the return of the aforegoing writ, comes into the circuit court here the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, by their attornies aforesaid; and the marshal of the Maryland district aforesaid, to wit, Washington Bonifant, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Sum'd.—W. BONIFANT, *U. S. Marshal*

And the said "The Philadelphia, Wilmington and Baltimore
3 Railroad Company" being called, appears in court here by Wil-

liam Schley and Thomas Donaldson, esquires, their attornies. And thereupon, on motion of the said Philadelphia, Wilmington and Baltimore Railroad Company, by their attornies aforesaid, it is ruled by the court here that the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman declare against the said Philadelphia, Wilmington and Baltimore Railroad Company, in the plea aforesaid, or judgment by the court here will be rendered against them in default thereof. And the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, by their attornies aforesaid, pray leave of the court here to imparle until the first Monday of November next, and he hath it, the same day as given to the said Philadelphia, Wilmington and Baltimore Railroad Company, then and there, &c.

At which mentioned first Monday in November, to wit, in the year 1868—until which day the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman had leave to imparle and then to declare against the said Philadelphia, Wilmington and Baltimore Railroad Company in the plea aforesaid—comes again into the circuit court here the parties aforesaid, by their attornies aforesaid; and the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, by their attornies aforesaid, declare against the said Philadelphia, Wilmington and Baltimore Railroad Company (on the second day of November, 1868) in the plea aforesaid, in form following, to wit:

DISTRICT OF MARYLAND,
United States of America, sct:

4 The Philadelphia, Wilmington and Baltimore Railroad Company, a corporation chartered by the States of Maryland, Delaware, & Pennsylvania, was summoned to answer unto Isaac R. Trimble, Ann C. Trimble, & Georgiana Presstman, citizens of the United States, & citizens & residents of the State of Maryland, in a plea of trespass on the case.

And thereupon the said plaintiffs, by Reverdy Johnson, Benjamin C. Presstman, & Severn Teackle Wallis, their attorneys, complain—

That whereas letters-patent were duly granted, under the authority of the United States, on the 10th day of July & the 3rd day of August, 1840, respectively, to a certain William Howe for a certain improvement in the manner of constructing the truss-frames of bridges & other structures, by him invented, by which said letters-patent the exclusive right & liberty of making, using, & vending the said improvement was granted to said Howe for fourteen years from the 10th day of July & the third day of August, 1840, respectively.

And whereas also by certain other letters-patent, bearing date the 28th day of August, 1846, the said United States did grant unto the said Howe the exclusive right of making, using, and vending a certain other improvement in truss-bridges, by him invented, for the term of fourteen years from the said 28th day of August, 1846.

And whereas the United States did further issue to the said Howe on the 23rd of August, 1860, certain other letters-patent, extending the terms aforesaid seven years from the expiration thereof, respectively.

To all of the rights of said Howe whereunder, in & for the States of New Jersey, Pennsylvania, Delaware, Maryland, & the District
5 of Columbia, the said Isaac R. Trimble became and was entitled by virtue of an assignment in writing from said Howe to said Trimble, dated July 9th, 1844, duly recorded as by law required, and by virtue of a certain other assignment in writing from Joseph Stone, ad-

ministrator of said Howe, who is since deceased, to said Trimble, also duly recorded; all of which rights the said Isaac R. Trimble, by assignment in writing, duly recorded, hath transferred and assigned to Georgiana Presstman and Ann C. Trimble, (the latter being the wife of said Trimble.)

Nevertheless the said defendant, to wit, at the district aforesaid, hath unlawfully infringed upon the rights aforesaid of the said plaintiffs as such assignees, & wrongfully & without the consent of the said plaintiffs, or either of them, hath made & used the said improvements so patented as aforesaid, & each of them, for its own use & benefit, & hath continued & still continues so to do, to the damage of said plaintiffs forty thousand dollars; & thereupon they bring suit, &c.

R. JOHNSON,
B. C. PRESSTMAN,
S. T. WALLIS,
For Pl'ffs.

And thereupon, on motion of the said Isaac R. Trimble and Ann C. Trimble, his wife, and Georgiana Presstman, by their attornies aforesaid, it is ruled by the court here that the said Philadelphia, Wilmington and Baltimore Railroad Company answer to the declaration of them, the said Isaac R. Trimble, and Ann C. Trimble, his wife,
6 and Georgiana Presstman, in the plea aforesaid, or judgment by the court here will be entered against them in default thereof.

And the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, by their attornies aforesaid, pray leave of the court here, according to the form of the statute in such case made and provided, to amend their declaration aforesaid, and to declare anew against the said Philadelphia, Wilmington and Baltimore Railroad Company in the plea aforesaid; and it is granted them.

And now here at this day, to wit, the 21st day of November, in the year 1868, the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, declared anew against the said Philadelphia, Wilmington and Baltimore Railroad Company in form following, to wit:

Plaintiffs' amended declaration.

In the circuit court of the United States for the district of Maryland.

The Philadelphia, Wilmington & Baltimore Railroad Company, a corporation created by the State of Maryland, was summoned to answer unto Ann C. Trimble, Georgiana Presstman, and Isaac R. Trimble in a plea of trespass on the case.

For that a certain William Howe was the original and first inventor of a certain new & useful improvement in the letters-patent hereinafter mentioned & fully described, the same being a new & useful improvement in the manner of constructing the truss-frame of bridges & other structures, which was not known or used before his said invention, & which was not, at the time of his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allow-
7 ance; and the said Howe, being so as aforesaid the inventor thereof, & being also a citizen of the United States, on the third day of August, in the year eighteen hundred and forty, upon due application there-

for, did obtain letters-patent therefor in due form of law, under seal of the Patent Office of the United States, signed by the Secretary of State of the United States, and countersigned by the Commissioner of Patents of the United States, bearing date the day & year aforesaid, whereby there was secured to him, his heirs, executors, or assigns, for the term of fourteen years from & after the date of the patent, the full & exclusive right & liberty of making, using, & vending to others to be used, the said invention, as by the said letters-patent in court to be produced will fully appear.

And the said plaintiffs further say that the said William Howe, after obtaining the said letters-patent from the United States as aforesaid, did, on the ninth day of July, in the year eighteen hundred & forty-four, by a certain instrument in writing, assign to Isaac R. Trimble, as of that date, for the considerations in said instrument of writing mentioned, all the right, title, and interest which he, the said William Howe, had in the said invention as secured to him by the said letters-patent, & also all the right, title, & interest which might be secured to him, the said William Howe, for alterations and improvements in the said invention from time to time, for, to, and in the States of New Jersey, Pennsylvania, Delaware, Maryland, & the District of Columbia, & also for and upon that portion of the Baltimore & Ohio railroad constructed at the date of said instrument, or to be thereafter constructed, in the State of Virginia, & in no other States or places, the same to be held & enjoyed by the said Isaac R. Trimble for his own use & behoof, & for the
8 use & behoof of the legal representatives of the said Isaac R. Trimble, to the full end of the term for which said letters-patent are or may be granted, as fully and entirely as the same would have been held & enjoyed by the said William Howe had the said assignment & sale not been made.

And the said plaintiffs further say that the said William Howe did make alterations in the said invention & improvements thereon, subsequent to the date of said letters-patent of the third day of August, 1840, & subsequent to the assignment to the said Isaac R. Trimble by the instrument aforesaid, to which alterations & improvements the said Isaac R. Trimble became entitled as grantee by the terms of said instrument, for the States & District aforesaid, & the portions of the railroad aforesaid in the State of Virginia aforesaid.

And these plaintiffs further say that the said William Howe was the first & original inventor of the said improvements & alterations, the same being a new & useful improvement in truss-bridges, which was not known or used before the said invention, and which was not at the time of his application for a patent therefor, as hereinafter mentioned, in public use or on sale with the consent or allowance of the said William Howe; & the said William Howe, being so as aforesaid the inventor thereof, on the twenty-eighth day of August, in the year eighteen hundred & forty-six, upon due application therefor, did obtain letters-patent therefor in due form of law, under seal of the Patent Office of the United States, signed by the Secretary of State of the United States & countersigned by the Commissioner of Patents of the United States, bearing date the day & year last aforesaid, whereby there was secured
9 to him, his heirs, executors, or assigns, for fourteen years from and after the date of the letters-patent last aforesaid, the full & exclusive right of making, using, & vending to others to be used, the said invention last aforesaid, as by the letters-patent last aforesaid to be produced in court will fully appear.

And the plaintiffs further say that, after the issue of the letters-patent

last aforesaid, the said William Howe departed this life, & letters of administration were duly granted upon his estate, by competent authority, to Joseph Stone, who thereupon made application, in due form of law, to the Commissioner of Patents of the United States for an extension of the original term of fourteen years aforesaid for which the letters-patent last aforesaid had been granted to the said William Howe, for the further term of seven years from the expiration of said original term, whereupon the said Commissioner of Patents did, upon a compliance by the said administrator with the requisitions of the acts of Congress in such case made and provided, & in accordance with the 18th section of the act of Congress approved July 4th, 1836, entitled "An act to promote the progress of the useful arts, and to repeal all acts & parts of acts heretofore made for that purpose," & the act approved the 27th day of May, 1848, entitled "An act to provide additional examiners in the Patent Office, & for other purposes," upon the twenty-third day of August, in the year 1860, decide that the last-mentioned patent ought to be extended; wherefore the said Commissioner of Patents, by virtue of the power in him vested by the said acts of Congress, did renew & extend the said patent, & certify that the same was extended accordingly,
10 for the term of seven years from & after the first term, to wit, from the 28th day of August, 1860, which certificate being duly entered of record in the Patent Office, the said patent had the same effect in law as though the same had been originally granted for the term of twenty-one years, as by the certificate aforesaid to be produced in court will fully appear.

And the plaintiffs further say that the title to the invention described in the said letters-patent of the 28th day of August, 1846, as well for the term originally granted as aforesaid as for the term of seven years in addition thereto, according to the extension of said original letters-patent as aforesaid, in the States of New Jersey, Pennsylvania, Delaware, Maryland, & the District of Columbia, & also for and upon that portion of the Baltimore & Ohio railroad lying within the State of Virginia, became, upon the issue of the letters-patent last aforesaid & the extension thereof, vested in the said Isaac R. Trimble by virtue of the terms of the assignment aforesaid; the said letters-patent last aforesaid & the extension thereof enuring, as they were successively obtained, to the benefit of the said Isaac R. Trimble & his legal representatives to the extent aforesaid.

And the plaintiffs further say that the title to the said invention, under the original letters-patent & the extension of the same, to the extent aforesaid, being so vested in the said Isaac R. Trimble, under & by virtue of the assignment aforesaid, he, the said Isaac R. Trimble, did, on the thirtieth day of May, in the year eighteen hundred and sixty-one, for a valuable consideration, assign all his property & estate whatsoever & wherever situated, of every kind & description, to the
11 plaintiffs Ann C. Trimble & Georgiana Presstman, trustees, for the purposes in said assignment set forth, as by the said assignment in court to be produced will appear.

And the plaintiffs further say that, at the time of making said assignment, the said Isaac R. Trimble was in possession of the invention to the extent aforesaid, as well under the original letters-patent as under the extension thereof, under the assignment from the said William Howe, & that his title thereto passed by the said assignment from the said Isaac R. Trimble to the plaintiffs.

And the said plaintiffs further say that the said exclusive right to the said invention was of great value to them during the period of the exten-

sion of the said patent to the extent aforesaid; that is to say, within the States & District aforesaid, and on the road aforesaid.

2nd count.

And the said plaintiffs further say that a certain William Howe was the original & first inventor of a new & useful improvement in the letters-patent hereinafter mentioned and fully described, the same being a new & useful improvement in the manner of constructing the truss-frame of bridges and other structures, which was not known or used before his said invention, and which was not at the time of his application for a patent, as hereinafter mentioned, in public use or on sale with his consent and allowance; and the said Howe, being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the 3rd day of August, 1840, upon due application therefor, did obtain letters-patent therefor in due form of law under seal of the Patent Office of the United States, signed by the Secretary of
12 State of the United States, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year aforesaid, whereby there was secured to him, his heirs, [heirs,] executors, or assigns, for the term of fourteen years from and after the date of the patent, the full and exclusive right of making, using, and vending to others to be used, the said invention, as by said letters-patent in court to be produced more fully appears.

And the said plaintiffs further say that the said William Howe, after obtaining the letters-patent from the United States aforesaid, did, on the ninth day of July, in the year eighteen hundred and forty-four, by a certain instrument of writing, assign to Isaac R. Trimble, as of that date, for the consideration in said instrument of writing expressed, all the right, title, and interest which he, the said William Howe, had in the said invention, as secured to him by said letters-patent, and also all the right, title, and interest which might be secured to him for alterations and improvements in the said invention from time to time, for, to, and in the States of New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia, and also for and upon that portion of the Baltimore and Ohio railroad constructed at the date of said instrument, or to be thereafter constructed, in the State of Virginia, and in other States or places, the same to be held and enjoyed by the said Isaac R. Trimble to the full end and term for which said letters-patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by the said William Howe had the said assignment and sale not been made.

13 And the said plaintiffs further say that the said William Howe did make alterations in the said invention and improvements thereon subsequent to the date of the said letters-patent of August 3rd, 1840, and subsequent to the assignment to the said Isaac R. Trimble by the instrument aforesaid, to which alterations and improvements the said Isaac R. Trimble became entitled, as grantee, by the terms of said instrument, for the States and District aforesaid and the portions of the railroad aforesaid in the State aforesaid.

And these plaintiffs further say that the said William Howe was the first and original inventor of the said improvements and alterations, the same being a new and useful improvement on truss-bridges, which was not known or used before his said invention, and which was not, at the time of his application for a patent therefor, as hereinafter mentioned, in public use or on sale with the consent or allowance of the said William

Howe; and the said William Howe, being so as aforesaid the inventor thereof, on the 28th of August, 1846, upon due application therefor, did obtain letters-patent therefor in due form of law under seal of the Patent Office of the United States, signed by the Secretary of State of the United States, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, whereby there was secured to him, his heirs, executors, or assigns, for fourteen years from and after the date of the letters-patent last aforesaid, the full and exclusive right of making, using, and vending to others to be used, the said invention last aforesaid, as by the letters-patent last aforesaid to be produced in court will fully appear.

14 And the plaintiffs further say that, after the issue of the letters-patent last aforesaid, the said William Howe departed this life, and letters of administration were duly granted upon his estate, by competent authority, to Joseph Stone, who thereupon made application in due form of law to the Commissioner of Patents for an extension of the original term of fourteen years aforesaid, for which the letters-patent last aforesaid had been granted to the said William Howe, for the further term of seven years from the expiration of the said original time, whereupon the said Commissioner of Patents did, upon a compliance by the said administrator with the requisitions of the acts of Congress in such case made and provided, and in accordance with the eighteenth section of the act of Congress, approved July 4th, 1836, entitled "An act to promote the progress of the useful arts and to repeal all acts and parts of acts heretofore made for that purpose," and the act of Congress, approved May 27th, 1848, entitled "An act to provide additional examiners in the Patent Office and for other purposes," upon the 23rd of August, 1860, decide that the said last-mentioned patent ought to be extended; wherefore the said Commissioner of Patents, in virtue of the power in him vested by the said acts of Congress, did renew and extend the said patent, & certify that the same was extended accordingly for the term of seven years from and after the first term, to wit, from the 28th day of August, 1860, which certificate being duly entered of record in the Patent Office, the said patent had the same effect in law as though the same had been originally granted for the term of twenty-one years, as by the certificate aforesaid to be produced in court

15 will fully appear.

And the plaintiffs further say that the title to the invention described in the said letters-patent of the 28th of August, 1846, as well for the term originally granted, as aforesaid, as for the term of seven years in addition thereto, according to the extension of said original letters-patent, as aforesaid, in the States of New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia, and also for and upon that portion of the Baltimore & Ohio railroad lying within the State of Virginia, upon the issue of the letters-patent last aforesaid, and the extension thereof, vested in said Isaac R. Trimble by virtue of the terms of the assignment aforesaid; the said letters-patent last aforesaid, and the extension thereof, enuring, as they were successively obtained, to the benefit of the said Isaac R. Trimble and his legal representatives to the extent aforesaid.

And the plaintiffs further say that after the decease of the said William Howe, as aforesaid, his administrator, the said Joseph Stone, did, by a certain instrument duly executed on the 18th day of September, in the year 1854, after executing the assignment from the said William Howe to the said Isaac R. Trimble aforesaid, and stating that the said William Howe made the alterations and improvements aforesaid, which

were patented as aforesaid, and that such alterations and improvements did belong to the said Isaac R. Trimble, who had used and paid for the same since the year 1846, as understood, and after further reciting that a special assignment of the patent of August 28th, 1846, might secure to the said Isaac R. Trimble more perfectly his legal rights, and tend to a more speedy adjustment of any disputed legal claim; there-
16 fore, he, the said administrator, with full authority vested in him, did assign, sell, and set over to the said Isaac R. Trimble, for a valuable consideration, all right, title, and interest which said William Howe might have assigned in said patent of August 28th, 1846, in the States and District aforesaid, for the use and behoof of said Isaac R. Trimble, his heirs and legal representatives, for the full end and term for which said letters-patent were issued and granted.

And the plaintiffs further say, that although said last-mentioned assignment is not dated, yet it was acknowledged by the said administrator on September 18th, 1854; all which will appear by reference to said last-mentioned assignment in court to be produced when required.

And the plaintiffs further say that the title to the said invention under the original letters-patent, and the extension of the same to the extent aforesaid, being so vested in the said Isaac R. Trimble under and by virtue of the assignment aforesaid, he, the said Isaac R. Trimble, did, on the 30th of May, 1861, for a valuable consideration, assign all his property and estate whatsoever and wherever situated, of every kind and description, to the plaintiff, Ann C. Trimble and Georgianna Presstman, trustees, for the purposes in said assignment set forth, as by said assignment in court to be produced will appear.

And the said plaintiffs further say that, at the time of making said assignment, the said Isaac R. Trimble was in possession of the invention to the extent aforesaid, as well under the original letters-patent, as under the extension by virtue of the several assignments aforesaid, from the said William Howe and Joseph Stone respectively, and
17 that his title passed by the assignment from the said Isaac R. Trimble to the plaintiffs.

And the plaintiffs say further that the said exclusive right to the said invention was of great value to them during the period of the extension aforesaid, to the extent aforesaid; that is to say, in the States and District aforesaid and on the road aforesaid.

Yet the said defendants, well knowing the premises, but contriving to injure the plaintiffs, did, on the first day of January, 1847, and at divers times before and afterwards during the original term of fourteen years, and the additional term of seven years, during the extension of said letters-patent, and before the institution of the suit in this case, in the State of Maryland and within the jurisdiction of this honorable court, unlawfully and wrongfully, and without the consent or allowance, and against the will, of the plaintiffs, make and use the said invention, in violation and infringement of the exclusive right so secured to the plaintiffs by the letters-patent of the United States and the assignment or assignments aforesaid, and contrary to the form of the statutes of the United States in such case made and provided, whereby the plaintiffs have been greatly injured and deprived of great profit and advantages, which they might and otherwise would have derived from said invention, and have sustained actual damage to the amount of forty (40) thousand dollars, and by force of the statute aforesaid an action hath accrued to them to recover the said actual damage, and such additional amount, not exceeding on the whole three times the amount of such actual damages, as the court may see fit to order and adjudge.

Yet the said defendants, though requested, have never paid
18 the same, or any part thereof, to the plaintiffs, but have refused and still do refuse so to do.

B. C. PRESSTMAN,
S. T. WALLIS,
Att'y for Pl'ffs.

And the said Philadelphia, Wilmington and Baltimore Railroad Company, by their attornies aforesaid, filed in court here the following pleas, to wit:

Defendants' pleas.

In the circuit court of the United States in & for the fourth circuit & district of Maryland.

THE PHILADELPHIA, WILMINGTON & BALTIMORE Railroad Company
at suit
ISAAC R. TRIMBLE, ANN C. TRIMBLE, & GEORGIANA Presstman.

1. And the said defendant, by Thomas Donaldson, its attorney, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the trespasses, or any of the trespasses, above laid to its charge, in manner and form as the said plaintiffs in their said declaration have alleged; & of this the said defendant puts itself upon the country.

2. And for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made & provided, says that the supposed causes of action in said declaration mentioned did not, nor did any of them, accrue to the said plaintiffs within three years next immediately before the commencement of this suit. And this
19 the said defendant is ready to verify.

Wherefore the said defendant prays judgment whether the said plaintiff, its action aforesaid, to have or maintain ought, &c.

TH. DONALDSON, *for Def't.*

And the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, by their attornies aforesaid, filed in court here the following replication, to wit:

Plaintiffs' replication.

Circuit court U. S. for dist. of M'd.—Nov. 7, 1868.

TRIMBLE & OTHERS
vs.
THE PHILAD., W., & ——— R. R. Co. } Replications.

And as to the 1st plea of the defendant, wherein it puts itself upon the country, the plaintiffs do the like.

And as to the said 2nd plea, the plaintiffs say that the said causes of action in the said declaration averred & mentioned did accrue to the said plaintiffs within three years next immediately before the institution

of the suit in this case; & of this the plaintiffs put themselves upon the country.

B. C. PRESSTMAN,
S. T. WALLIS, *for Pl'ffs.*

And as to the second replication, the defendant doth the like.
TH. DONALDSON, *for Def't.*

And now here, to wit, on the 23rd day of November, in the
20 year 1868, the following agreement was filed in said cause, to wit:

In the superior court of Balt. City.

TRIMBLE, &c.,
vs.
THE PHILAD., W., & BALT. R. R. CO.

It is agreed in this case that the same questions may be raised upon prayers to the court, as to the plea of limitation in the same pleaded, as if the said plea had been demurred to.
Nov. 23rd, 1868.

B. C. PRESSTMAN,
S. T. WALLIS, *for Pl'ffs.*
TH. DONALDSON, *for Def't.*

Whereupon, for trying the issues aforesaid, it is ordered by the court here that twenty persons from the panel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid be drawn by ballot; and thereupon the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit: Edward B. Dallam, Philip Gover, Upton Scott, Thomas C. James, James H. Bradshaw, R. H. Hyde, Samuel P. Storm, George L. Shipley, J. M. Pearce, F. Dorsey Herbert, W'm P. Kimball, W'm H. Byrn; who, being empanelled and sworn to say the truth in the premises, upon their oath do say that the said Philadelphia, Wilmington and Baltimore Railroad
Company are guilty of the premises in manner and form as the
21 said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman have above complained against them; and they assess the damages of them, the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, by occasion of the premises, to the sum of twelve thousand five hundred dollars.

Judgment.

Therefore it is considered by the court here that the said Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman recover against the said "The Philadelphia, Wilmington and Baltimore Railroad Company," as well the sum of forty thousand dollars, the damages in the declaration of them, the said Isaac R. Trimble and Ann C. Trimble, his wife, and Georgiana Presstman, to be released upon the payment of twelve thousand five hundred dollars, the damages assessed by the jury, with interest from the 27th day of November, 1868, as the sum of , adjudged by the court here unto the said Isaac

R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman, on their assent, for their costs and charges by them about their suit in this behalf expended. And the said "The P., W. & B. R. R. Co." in mercy, &c.

MEMORANDUM.—Before the jurors aforesaid withdrew from the bar of the court here, the said Philadelphia, Wilmington and Baltimore Railroad Company, by their attornies aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed; and which is in form following, to wit:

Defendants' bill of exceptions.

22 In the circuit court of the United States of America for the district of Maryland.

ISAAC R. TRIMBLE, AND ANNE C. TRIMBLE, HIS wife, & Georgianna Presstman,
vs.
THE PHILADELPHIA, WILMINGTON & BALTIMORE Railroad Company.

At the trial of this case to sustain the issues joined on their part, the plaintiffs offered in evidence duly certified copies of the following patents, and of the endorsement extending the patent of August 28th, 1846.

Patent of August 3, 1840.

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters-patent (except the drawing) granted William Howe, August 3rd, 1840, No. 1711.

In testimony whereof I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-second.

[SEAL.] T. C. THEAKER.

No. 1711.

The United States of America to all to whom these letters-patent shall come:

Whereas William Howe, Warren, Massachusetts, has alleged that he has invented a new and useful improvement in the manner of constructing the truss-frames of bridges and other structures, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improve-
23 ment, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars; and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said William Howe, his heirs, administrators, or assigns, for the term of fourteen years from the third day of August, one thousand eight hundred and forty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William Howe in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this third day of August, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States of America the sixty-fifth.

JOHN FORSYTH, *Secretary of State.*

Countersigned and sealed with the seal of the Patent Office.

[L. S.] H. L. ELLSWORTH,
Commissioner of Patents.

The schedule referred to in these letters-patent, and making part of the same.

To all whom it may concern:

Be it known that I, William Howe, of Warren, in the county of Worcester, in the State of Massachusetts, have invented a new
24 and improved manner of constructing a truss-frame, which is principally intended for bridges, but which is applicable also to trussed roofs, and many other structures where trussing is employed; and I do hereby declare that the following is a full and exact description thereof:

The truss-frame which I am about to describe is in many respects similar to the truss-frame for which, under several modifications thereof, letters-patent of the United States are about to be granted to me under an application therefor, dated the eleventh day of May, 1840, but it differs therefrom in the effecting of the straining-up and cambering by the operation of iron bars or rods, furnished with screw-nuts, and of wedge-pieces so placed as to be rendered effective by the action of said screw-rods or bolts. For the general construction of my truss-frame, I refer to the description or specification which will accompany and make a part of said letters-patent, as above applied for, and in which it was intended to include the truss-frame herein described, but it has been deemed expedient to separate it therefrom, and to make it the subject of a distinct patent.

In the accompanying drawing, Fig. 1 is my truss-frame, which has rods or bars of iron in the place of the posts of wood, by which the straining-up is effected in the truss-frames above alluded to; the braces and counterbraces in the present instance are similar in their action to that described and illustrated in said specification and drawings. Nos. 1, 1, 1, in Fig. 1, are wedge-pieces of hard wood or of iron, which are placed crosswise of the string-pieces *a a a' a'*, to form the bearings of the ends of the braces and counterbraces. Pieces of wood or of iron, 2, 2,
25 are also placed at the ends of the truss-frame, having their ends bearing against the string-pieces for the purpose of resisting or counteracting the action of the turning-screws. Nos. 3, 3, are blocks of wood or pieces of iron placed between the screw-nuts and the string-pieces for the iron bolts to pass through, and intended to afford an equal bearing on the string-pieces both above and below the truss-frame.

Nos. 4, 4, 4, are the iron bolts which are to be strained up by screw-nuts which have their bearing against the pieces 3, 3, 3, or against washers placed upon them.

To cause this truss-frame to camber by the tightening of the screws, it must be so framed in the first instance as that by the length of the braces inclined toward the center, or by the width given to the upper wedge-pieces, 1, 1, it shall camber to a certain extent, which effect will then necessarily be augmented by the tightening of the screws.

Fig. 2 is a top view of the string-piece of my truss-frame, and I have there represented it as made by combining together several thicknesses of plank, a mode which, although not essential, I sometimes adopt.

What I claim as constituting my invention in the above-described truss-frame, and which I desire to secure by letters-patent, is the manner in which I have combined the iron bolts and the wedge-pieces, against which the braces and counterbraces abut, so as to co-operate in increasing the camber to any desired extent, the whole truss-frame being constructed and acting substantially as herein set forth.

WILLIAM HOWE.

Witnesses:
DANIEL HITCHCOCK.
JOS. F. HITCHCOCK.

26 *Patent of August* 28, 1846.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of letters-patent issued to William Howe on the twenty-eighth day of August, eighteen hundred and forty-six.

In testimony whereof I, Charles Mason, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

[SEAL'S PLACE.] C. MASON.

No. 4726.

The United States of America to all to whom these letters-patent shall come:

Whereas William Howe, Springfield, Massachusetts, has alleged that he has invented a new and useful improvement in truss-bridges, which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars; and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said William Howe, his heirs, administrators, or assigns, for the term of four-
27 teen years from the twenty-eighth day of August, one thousand eight hundred and forty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used,

the said improvement, a description whereof is given in the words of the said William Howe in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

JAMES BUCHANAN,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.
[L. S.] HENRY H. SYLVESTER,
Act'g Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, William Howe, of Springfield, in the county of Hampden, and State of Massachusetts, have made a new and useful improvement in the manner of constructing the truss-frames of bridges, and I do hereby declare that the following is a full and exact description thereof:

The general construction of my truss-frame is the same with that for which I obtained letters-patent under date of the 3rd day of
28 August, 1840, but in my improvement thereof I use an arch-beam, which is combined with the general truss in such manner as that it may be made to co-operate with the other parts of the truss-frame in raising or lowering the camber of the bridge, in effecting which I have also adopted an improvement in the manner of lengthening or shortening the braces so as to aid also in regulating the camber.

In the accompanying drawing, Fig. 1 is a side elevation of my improved truss-frame; Fig. 2 is an enlarged view of the manner of connecting the arch-beam with the counterbraces for the purpose of regulating the camber; Fig. 3 is a top view of a part of the lower chord; Fig. 4 is a bottom view of the same; Fig. 5 represents a vertical section thro' the line *x x* of Fig. 3; Fig. 6, a similar section in the line *o o* of Fig. 3; the last four figures being on the enlarged scale. A A is the arch-beam which passes independently between the principal braces G G of the truss-frame, and is sustained by the abutments in the usual manner, the principal braces being double, and at a suitable distance apart. B B are the counterbraces which, at their ends, abut on the bearing-blocks or wedge-pieces C C, which are to be made of wood or metal, but generally of the latter. The counterbraces are in the same plane with the arch-beam, and where they would meet it they are cut off and are provided with regulating-screws *a a*, which are tapped into a nut *b b* on those ends of each of the counterbraces which meet the arch-beam, the screws *a a* entering the said braces sufficiently far to admit of any required extent of regulation. The heads of these screw-bearings are
29 made hemispherical, and are received within concave sockets in the metal plate *c c* affixed to the arch-beam. To render these metallic bearings independent of the shrinkage of the timber, there may be bolts or metallic shanks, represented by the dotted lines *d d*, extending from them through the wood-work of the arch-beam. D D are the iron rods by which the straining-up is regulated. These rods pass

through the string-pieces in the usual manner, but I cause them to pass also through metallic sockets that are embraced between the timbers of the string-pieces, said sockets being so formed as to give to the screw-nuts, by which the strain is made on the vertical rods, a bearing which is independent of the shrinkage of the wood-work of the string-piece. E E, Fig. 3, 4, 5, and six, represent said sockets, which I make of cast iron, and through which the rods D D are to pass; these sockets extend entirely through the thickness of the string-pieces, being situated between the timbers of which said string-pieces are composed. E, Fig. 3, is a view of the upper, and E, Fig. 4, a view of the lower, ends of these sockets, which are widened out by means of wings or feathers, as shown by the shaded lines; these wings or feathers serving to sustain the bearing-blocks and render them steady. Under this arrangement the nuts F F, by which the rods D D are tightened up, do not bear either directly or indirectly upon the timber of the string-pieces, but only upon the metallic sockets, and the truss, therefore, will not be lowered by any shrinkage of the timber.

To preserve the strength of the string-pieces as much as possible where the arch-pieces pass through them, I divide the arch-pieces at that part, and allow their ends to abut both above and below the string-pieces upon cast-iron bearings, as shown at *e e*, which cast-iron bearings being in the form of flat plates where they pass between the tim-
30 bers of the string-pieces, do so without sensibly impairing their strength. The two principal braces, which are marked G′, that are shown as passing through the lower string-piece, and as resting in the abutments, are also provided with cast-iron bearings *e e*, similar to those of the arch-beam, and for a like purpose.

I sometimes apply screws at the ends of the principal braces, as shown at *f f*, Fig. 1; these being inserted in the ends of said braces in the same manner with the screws *a a* in the counterbraces, the heads of said screws bearing upon the blocks or wedge-pieces C C, which have a concavity in them for that purpose.

It will be seen that by the foregoing arrangement the camber of the bridge may be readily regulated by the combination of the rods D D, and of the regulating screws *a a*, and that the sustaining power of the arch-brace is brought into full play, whatever may be the camber of the bridge. Instead of causing the regulating screws *a a* to bear upon the arch-beam, the counterbraces may be made to bear on the opposite sides of said beam, and the screws *a a* may be inserted in the upper and lower ends of the counterbraces, and their heads be made to operate on the bearing-blocks or wedge-pieces C C; the effect in this case will be the same with that of the arrangement first described.

Having thus fully described the nature of my improvements in the truss-frames of bridges, what I claim therein as new, and desire to secure by letters-patent, is, first, the manner in which I have combined the arch-beam with the counterbraces and the other parts of the truss-frame by means of the regulating screws that are made to bear on the arch-beam or upon the bearing-blocks or wedge-pieces C C, so as to effect the same purpose. I also claim the manner of sustaining the bearing
31 of the braces on the string-pieces by passing the metallic sockets E E entirely through the string-pieces, so that the bearing-blocks C C and the nuts F operate on the upper and lower ends of the sockets, and are not effected by the shrinkage of the wood-work.

W'M HOWE.

Witnesses:
THO'S P. JONES.
EDWIN L. BRUNDAGE.

the said improvement, a description whereof is given in the words of the said William Howe in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

JAMES BUCHANAN,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.
[L. S.] HENRY H. SYLVESTER,
Act'g Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern :

Be it known that I, William Howe, of Springfield, in the county of Hampden, and State of Massachusetts, have made a new and useful improvement in the manner of constructing the truss-frames of bridges, and I do hereby declare that the following is a full and exact description thereof :

The general construction of my truss-frame is the same with that for which I obtained letters-patent under date of the 3rd day of
28 August, 1840, but in my improvement thereof I use an arch-beam, which is combined with the general truss in such manner as that it may be made to co-operate with the other parts of the truss-frame in raising or lowering the camber of the bridge, in effecting which I have also adopted an improvement in the manner of lengthening or shortening the braces so as to aid also in regulating the camber.

In the accompanying drawing, Fig. 1 is a side elevation of my improved truss-frame ; Fig. 2 is an enlarged view of the manner of connecting the arch-beam with the counterbraces for the purpose of regulating the camber ; Fig. 3 is a top view of a part of the lower chord ; Fig. 4 is a bottom view of the same ; Fig. 5 represents a vertical section thro' the line *x x* of Fig. 3 ; Fig. 6, a similar section in the line *o o* of Fig. 3 ; the last four figures being on the enlarged scale. A A is the arch-beam which passes independently between the principal braces G G of the truss-frame, and is sustained by the abutments in the usual manner, the principal braces being double, and at a suitable distance apart. B B are the counterbraces which, at their ends, abut on the bearing-blocks or wedge-pieces C C, which are to be made of wood or metal, but generally of the latter. The counterbraces are in the same plane with the arch-beam, and where they would meet it they are cut off and are provided with regulating-screws *a a*, which are tapped into a nut *b b* on those ends of each of the counterbraces which meet the arch-beam, the screws *a a* entering the said braces sufficiently far to admit of any required extent of regulation. The heads of these screw-bearings are made hemispherical, and are received within concave sockets in
29 the metal plate *c c* affixed to the arch-beam. To render these metallic bearings independent of the shrinkage of the timber, there may be bolts or metallic shanks, represented by the dotted lines *d d*, extending from them through the wood-work of the arch-beam. D D are the iron rods by which the straining-up is regulated. These rods pass

through the string-pieces in the usual manner, but I cause them to pass also through metallic sockets that are embraced between the timbers of the string-pieces, said sockets being so formed as to give to the screw-nuts, by which the strain is made on the vertical rods, a bearing which is independent of the shrinkage of the wood-work of the string-piece. E E, Fig. 3, 4, 5, and six, represent said sockets, which I make of cast iron, and through which the rods D D are to pass; these sockets extend entirely through the thickness of the string-pieces, being situated between the timbers of which said string-pieces are composed. E, Fig. 3, is a view of the upper, and E, Fig. 4, a view of the lower, ends of these sockets, which are widened out by means of wings or feathers, as shown by the shaded lines; these wings or feathers serving to sustain the bearing-blocks and render them steady. Under this arrangement the nuts F F, by which the rods D D are tightened up, do not bear either directly or indirectly upon the timber of the string-pieces, but only upon the metallic sockets, and the truss, therefore, will not be lowered by any shrinkage of the timber.

To preserve the strength of the string-pieces as much as possible where the arch-pieces pass through them, I divide the arch-pieces at that part, and allow their ends to abut both above and below the string-pieces upon cast-iron bearings, as shown at *e e*, which cast-iron bearings being in the form of flat plates where they pass between the timbers of the string-pieces, do so without sensibly impairing their strength. The two principal braces, which are marked G', that are shown as passing through the lower string-piece, and as resting in the abutments, are also provided with cast-iron bearings *e e*, similar to those of the arch-beam, and for a like purpose.

I sometimes apply screws at the ends of the principal braces, as shown at *f f*, Fig. 1; these being inserted in the ends of said braces in the same manner with the screws *a a* in the counterbraces, the heads of said screws bearing upon the blocks or wedge-pieces C C, which have a concavity in them for that purpose.

It will be seen that by the foregoing arrangement the camber of the bridge may be readily regulated by the combination of the rods D D, and of the regulating screws *a a*, and that the sustaining power of the arch-brace is brought into full play, whatever may be the camber of the bridge. Instead of causing the regulating screws *a a* to bear upon the arch-beam, the counterbraces may be made to bear on the opposite sides of said beam, and the screws *a a* may be inserted in the upper and lower ends of the counterbraces, and their heads be made to operate on the bearing-blocks or wedge-pieces C C; the effect in this case will be the same with that of the arrangement first described.

Having thus fully described the nature of my improvements in the truss-frames of bridges, what I claim therein as new, and desire to secure by letters-patent, is, first, the manner in which I have combined the arch-beam with the couterbraces and the other parts of the truss-frame by means of the regulating screws that are made to bear on the arch-beam or upon the bearing-blocks or wedge-pieces C C, so as to effect the same purpose. I also claim the manner of sustaining the bearing of the braces on the string-pieces by passing the metallic sockets E E entirely through the string-pieces, so that the bearing-blocks C C and the nuts F operate on the upper and lower ends of the sockets, and are not effected by the shrinkage of the wood-work.

W'M HOWE.

Witnesses:
THO'S P. JONES.
EDWIN L. BRUNDAGE.

Patent of 1846, *and extension.*

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters-patent granted William Howe, dated 28th August, 1846, and the "certificate of extension"

In testimony whereof I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this third day day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] ELISHA FOOTE.

The United States of America to all to whom these letters-patent shall come:

Whereas William Howe, Springfield, Massachusetts, has alleged that he has invented a new and useful improvement in truss-bridges, which, he states, has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily
32 believe that he is the original and first inventor or discoverer of the said improvement, and that the same has not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars; and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said William Howe, his heirs, administrators, or assigns, for the term of fourteen years, from the twenty-eighth day of August, one thousand eight hundred and forty-six, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William Howe in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

JAMES BUCHANAN,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

[L. S.] HENRY H. SYLVESTER,
Acting Commissioner of Patents.

33 *The schedule referred to in these letters-patent and making part of the same.*

To all whom it may concern:

Be it known that I, William Howe, of Springfield, in the county of Hampden, and State of Massachusetts, have made a new and useful improvement in the manner of constructing the truss-frames of bridges, and I do hereby declare that the following is a full and exact description thereof:

The general construction of my truss-frame is the same with that for which I obtained letters-patent under date of the 3rd day of Aug't, 1840, but in my improvement thereof I use an arch-beam, which is combined with the general truss in such manner that it may be made to cooperate with the other parts of the truss-frame in raising or lowering the camber of the bridge, in effecting which I have also adopted an improvement in the manner of lengthening or shortening the braces so as to aid also in regulating the camber.

In the accompanying drawing Fig. 1 is a side elevation of my improved truss-frame; Fig. 2 is an enlarged view of the manner of connecting the arch-beam with the counterbraces for the purpose of regulating the camber; Fig. 3 is a top view of a part of the lower chord; Fig. 4 is a bottom view of the same; Fig. 5 represents a vertical section thro' the line *x x* of Fig. 3; Fig. 6 a similar section in the line *o o* of Fig. 3; the last four figures being on the enlarged scale.

A A is the arch-beam which passes independently between the principal braces G G of the truss-frame, and is sustained by the abutments in the usual manner, the principal braces being double, and at a suit-
34 able distance apart. B B are the counterbraces, which at their ends abut on the bearing-blocks or wedge-pieces C C, which are to be made of wood or metal, but generally of the latter. The counterbraces are in the same plane with the arch-beam, and where they would meet it they are cut off, and are provided with regulating screws *a a*, which are tapped into a nut *b b* on those ends of each of the counterbraces which meet the arch-beam, the screws *a a* entering said braces sufficiently far to admit of any required extent of regulation. The heads of these screw-bearings are made hemispherical, and are received within concave sockets in the metal plate *c c* affixed to the arch-beam. To render these metallic bearings independent of the shrinkage of the timber, there may be bolts or metallic shanks represented by the dotted lines *d d*, extending from them through the wood-work of the arch-beam. D D are the iron rods by which the straining-up is regulated. These rods pass through the string-pieces in the usual manner, but I cause them to pass also through metallic sockets that are embraced between the timbers of the string-pieces, said sockets being so formed as to give to the screw-nuts, by which the strain is made on the vertical rods, a bearing which is independent of the shrinkage of the wood-work of the string-piece. E E, Figs. 3, 4, 5, and 6, represent said sockets, which I make of cast iron, and through which the rods D D are to pass. These sockets extend entirely through the thickness of the string-pieces, being situated between the timbers of which said string-pieces are composed. E, Fig. 3, is a view of the upper, and E, Fig. 4, a view of the lower ends of these sockets, which are widened out by means of wings or
35 feathers, as shown by the shaded lines, these wings or feathers serving to sustain the bearing-blocks and render them steady. Under this arrangement, the nuts F F, by which the rods D D are tightened up, do not bear either directly or indirectly upon the timber of the string-pieces, but only upon the metallic sockets, and the truss, therefore, will not be lowered by any shrinkage of the timber. To preserve the strength of the string-pieces as much as possible where the arch-pieces pass through them, I divide the arch-pieces at that part, and allow their ends to abut both above and below the string-pieces upon cast-iron bearings as shown at *e e*, which cast-iron bearings being in the form of flat plates where they pass between the timbers of the string-pieces, do so without sensibly impairing their strength. The two principal braces, which are marked G', that are shown as passing through the lower

string-piece and as resting in the abutments, are also provided with cast-iron bearings *e e*, similar to those of the arch-beam, and for a like purpose.

I sometimes apply screws at the ends of the principal braces, as shown at *f f*, Fig. 1, there being inserted in the ends of said braces, in the same manner with the screws *a a* in the counterbraces, the heads of said screw-bearings upon the blocks or wedge-pieces C C, which have a concavity in them for that purpose.

It will be seen that by the foregoing arrangement the camber of the bridge may be readily regulated by the combination of the rods D D and of the regulating-screws *a a*, and that the sustaining power of the arch-brace is brought into full play, whatever may be the camber of the bridge. Instead of causing the regulating-screws *a a* to bear upon the arch-
36 beam, the counterbraces may be made to bear on the opposite sides of said beam, and the screws *a a* may be inserted in the upper and lower ends of the counterbraces, and their heads be made to operate on the bearing-blocks or wedge-pieces C C; the effect in this case will be same with that of the arrangement first described.

Having thus fully described the nature of my improvements in the truss-frames of bridges, what I claim therein as new, and desire to secure by leters-patent, is, first, the manner in which I have combined the arch-beam with the counterbraces, and the other parts of the truss-frame by means of the regulating-screws that are made to bear on the arch-beam or upon the bearing-blocks or wedge-pieces C C, so as to effect the same purpose. I also claim the manner of sustaining the bearing of the braces on the string-pieces, by passing the metallic sockets E E entirely through the string-pieces, so that the bearing-blocks C C, and the nuts F operate on the upper and lower ends of the sockets, and are not effected by the shrinkage of the wood-work.

WM HOWE.

Witnesses:
THO'S P. JONES.
EDWIN L. BRUNDAGE.

Certificate of extension.

Whereas upon the petition of Joseph Stone, administrator of William Howe, late of Springfield, Mass., deceased, for an extension of the within patent, granted to said William Howe on the 28th day of August, 1846, the undersigned, in accordance with the 18th section
37 of the act of Congress approved the 4th day of July, 1836, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," and the act approved the 27th day of May, 1848, entitled, "An act to provide additional examiners in the Patent Office, and for other purposes," did, on this 23rd day of August, 1869, decide that said patent ought to be extended:

Now, therefore, I, Philip F. Thomas, Commissioner of Patents, by virtue of the power vested in me by said acts of Congress, do renew and extend the said patent, and certify that the same is hereby extended, for the term of seven years from and after the expiration of the first term, viz., from the 28th day of August, 1860, which certificate being duly entered of record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years.

In testimony whereof I have caused the seal of the Patent Office to

be hereunto affixed this 23rd day of August, 1860, and of the independence of the United States the eighty-fifth.

[L. S.] PHILIP F. THOMAS,
Commissioner.

38 Also duly certified copies of the two following assignments:

Assignment of Howe to Trimble.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this second day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL'S PLACE.] ELISHA FOOTE.

Whereas I, William Howe, of Warren, now resident of Springfield, State of Massachusetts, did obtain letters-patent of the United States for certain new and useful improvements in the construction of truss-frames of bridges and other structures, which letters bear date the tenth day of July, and also the third day of August, one thousand eight hundred and forty; and whereas I. R. Trimble, of the State of Delaware, is desirous of acquiring an interest in the same:

Now, this indenture witnesseth that for and in consideration of one dollar, in hand to me paid, the receipt whereof is hereby acknowledged, and also in consideration of the further sum of eighteen thousand dollars, payable in five years, with interest at three per cent. per annum, as follows: Two thousand dollars payable first of December, 1845; two thousand five hundred dollars payable first of December, 1846; three thousand five hundred dollars payable first of December, 1847;

39 five thousand dollars payable first of December, 1848; and five thousand dollars payable first day of December, 1849, I have assigned, sold, and set over, and do hereby assign, sell, and set over, all the right, title, and interest which I have in said invention as secured to me by said letters-patent, and also all right, title, and interest which may be secured to me for alterations and improvements in the same from time to time for, to, and in the following States, viz., New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia, as also for and upon that portion of the Baltimore and Ohio railroad now constructed, or to be constructed, in the State of Virginia, and in no other States or places, the same to be held and enjoyed by the said I. R. Trimble for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters-patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not have been made. I, the said William Howe, do hereby agree and bind myself and my legal representatives to defend all suits brought by interferring claimants for use of said patent or improvement at my own proper cost and trouble; and in case my patent cannot be sustained, I do agree to release unto the said I. P. Trimble, or his legal representatives, all sums due or unpaid by him on this contract.

In testimony whereof I have hereunto set my hand and affixed my seal this ninth day of July, one thousand eight hundred and forty-four.

W'M HOWE. [SEAL.]

Witnesses at signing:
JOHN BINNS.
MASON NAYLOR.

40 CITY OF PHILADELPHIA, *ss:*

The above-named William Howe personally appears before the subscriber, an alderman of the said city, and acknowledges the above and foregoing instrument of writing as his act and deed, and desires that it may be recorded as such.

Witness my hand and seal July 9, 1844.

JOHN BINNS, *Ald.* [SEAL.]

Rec'd & recorded Feb'y 19, 1846.

Assignment of Stone, adm'r, to Trimble.

Whereas William Howe, of Springfield, Massachusetts, now deceased, did obtain letters-patent of the United States for certain new and useful improvements in the construction of truss-frames for bridges and other structures, which letters bear date the 10th day of July, and also the 3d day of August, 1840; and whereas the said William Howe did, for a valuable consideration, assign to I. R. Trimble, of the State of Delaware, on the ninth day of July, 1844, "all right, title, and interest" which he (W'm Howe) had in said invention, and "also all right, title, and interest" which may be secured to me (Howe) for alterations and improvements in the same, from time to time, for and in the following States: New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia; and whereas the said William Howe did, in the year 1846, make certain alterations and improvements in the mode of constructing said bridge, for which he obtained letters-patent, dated August 28th, 1846, and which alterations and improvements, as secured by the patent of August 28th, 1846, belong to the said I. R. Trimble,

41 who has used and paid for the same since the year 1846, as understood at the time; and whereas a special assignment of the patent of August 28th, 1846, may secure to I. R. Trimble more perfectly his legal rights, and tend to a more speedy adjustment of any disputed claim:

Now, therefore, be it known that I, Joseph Stone, adm'r of the estate of William Howe, with full authority vested in me, do hereby assign, sell, and set over to I. R. Trimble, for a valuable consideration, all right, title, and interest which said William Howe may have assigned in said patent of August 28th, 1846, in the States of New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia, for the use and behoof of himself, his heirs, and legal representatives, for the full end of the term for which said letters-patent were issued or granted.

JOSEPH STONE,
Administrator of the Estate of W'm Howe.

Witnesses:
E. D. BEACH.
N. D. PARKS.

COM'LTH OF MASSACHUSETTS,
Hampden, ss., Sept. 18th, 1854:

Then personally appeared Joseph Stone, and acknowledged the foregoing instrument, by him subscribed, to be his free act and deed.

Before me, E. D. BEACH, *Justice of the Peace.*

COMMONWEALTH OF MASSACHUSETTS, *Hampden, ss:*

I, Geo. B. Morris, clerk of the judicial courts of the common-
42 wealth for the county of Hampden, do certify that E. D. Beach, esquire, whose signature is affixed to the certificate on the paper hereto annexed, was, at the date thereof, one of the justices of the peace within and for said county, duly commissioned, and acting under the authority of the commonwealth, and that full faith and credit are and ought to be given to his acts and attestations done in that capacity, and that I am acquainted with the handwriting of the said E. D. Beach, and believe his signature to said certificate is genuine.

In testimony whereof I have hereunto set my hand, and affixed the seal of the court of common pleas, for said commonwealth, this eighteenth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

[SEAL.] GEO. B. MORRIS, *Clerk.*

Also a deed of trust from Isaac R. Trimble to Anne C. Trimble and Georgeanna Presstman, dated May 30, 1861, the execution of which and the recording of the same, according to the endorsements made thereon, were proved; which deed and endorsements were in the terms following:

Deed from Trimble to plaintiffs.

This deed made this thirtieth day of May, eighteen hundred & sixty-one, by Isaac R. Trimble.

Whereas the said Isaac R. Trimble is desirous of settling his property for the benefit of his wife and family, therefore this deed witnesseth that, in consideration of the above purpose, he, the said Isaac R. Trimble, doth hereby give, grant, bargain & sell, assign & transfer, all his prop-
43 erty & estate whatsoever & wheresoever, of every kind and discription, to Anne C. Trimble and Georgianna Presstman upon the following trusts, to wit: First, to pay all debts due by said Isaac R. Trimble; then to hold the property for the use and benefit of the said Anne C. Trimble; and, thirdly, to convey said property, or any part thereof, to such person or persons as may be designated or appointed by said Anne C. Trimble, either by will or deed.

Witness my hand & seal.

ISAAC R. TRIMBLE. [SEAL.]

Test:
BRADLEY T. JOHNSON.
PATRICK STANTON.

[10-c'ts int. rev. stamp cancelled.]

MARYLAND, *Frederick County, sct:*

I hereby certify that, on this thirtieth day of May, eighteen hundred & sixty-one, before the subscriber, a justice of the peace of said State for said county, personally appeared Isaac R. Trimble, & acknowledged the aforegoing deed to be his act.

Acknowledged before—

EZRA MICHAEL.

MARYLAND, *Frederick County, sct:*

I hereby certify that Ezra Michael, esquire, before whom the foregoing acknowledgment was made, and who has thereto subscribed his name, was, at the time of so doing, a justice of the peace of the State of

Maryland in and for Frederick County, duly elected, commissioned, and sworn.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Frederick County this first day of June, A. D. 1861.

[SEAL'S PLACE.] B. G. FITZHUGH,
44 *Clerk of the Circuit Court for Frederick County.*

U. S. PATENT OFFICE:

Rec'd for record Mar. 4, 1868, and recorded in liber I, 10, page 68, of transfers of patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL'S PLACE.] A. M. STOUT,
Acting Com'r of Patents.

Received for record 26th July, 1861, at 12 o'clock m. Same day recorded in liber G. E. S., No. 210, folio 423, &c., one of the land records of Balto. City, & exam'd.

P'r GEO. E. SANGSTON, *Clk.*

The plaintiffs then proved by James Smith, a competent witness, that said Smith had been a bridge-builder since the year 1845, and is familiar with Howe's patents for the construction of truss-frames for bridges and for improvements of the same, having built according to said patents since 1846; that he knows the bridges erected by the defendants over the Susquehanna, over the Brandywine, and at Gray's Ferry, and in all three the patents and improvements of Howe for truss-frames for bridges as described in the patent of August 3rd, 1840, and improved in the patent of August 28th, 1846, were used; that the bridge over the Susquehanna had about twelve spans of about 250 feet each, beside a smaller span for the draw; the Brandywine bridge has three spans, varying from 90 to about 120 feet each; and the Gray's Ferry bridge has
45 five spans, varying from [from] 100 to 140 feet each; that the Susquehanna bridge was finished in November, 1866, Gray's Ferry bridge was partly built in 1864, and partly in 1865, and the Brandywine bridge was built in 1866.

The plaintiff further proved by Isaac R. Trimble, a competent witness, one of the plaintiffs, that he has lately examined the three bridges named by the witness Smith; that he measured the first span of the Susquehanna bridge, and found it to be 254 feet, and counted the rest, as the company permit no one to walk over their bridges; that the number of spans is twelve, and the whole length of the bridge is 3,303 feet; that Gray's Ferry bridge has five spans, of 102 feet, 115 ft., 133 ft., 136 ft., and 140 ft.; that the Brandywine bridge has one span of 88 ft. and two spans of 125 feet each; the total length of Gray's Ferry bridge is 999 ft., and of Brandywine bridge 549 ft.; that in all three of said bridges the invention secured by the patent to Howe on August 3d, 1840, & improved by the patent of August 28th, 1846, extended on 23rd August, 1860, was used; that the patent fee for the use of Howe's patents was originally fixed on the basis of 5 per cent. on the estimated cost of the framing of the bridge on which they were used, and on that basis the fee charged was put at one dollar per lineal foot of one-hundred-foot span, the cost of such spanning then about $2,000, and such fee per lineal foot continued to be charged up to 1858 or 1859, when witness increased the charge on account of the increase of the cost of building bridges, and his charge since

that date has been double the former fee, because the cost of building bridges has at least doubled, and the fee is still in the same proportion of 5 per cent. of the cost; that witness considered the patent right
46 as merchandise, and that he was entitled to a commission of a certain rate for its use on the cost of the construction to which it was applied.

Witness stated that he is an architect as well as a civil engineer; that the fees of architects are paid by a percentage on cost, and therefore increased by the increase of cost. Witness did not charge in this case on the full cost of the Susquehanna bridge, but on an assumed value far less than its actual cost; the cost of bridges, as all engineers know, has more than doubled since the calculation and charge of $1 per lineal foot, as above stated, were originally made.

On cross-examination the said Trimble testified that the number of bridges built in which Howe's patents were used was large in the United States; that the patent fee charged had always been at so much per lineal foot; that he had received larger fees than $1 per lineal foot in several cases, but only now remembered two, in which he received either one dollar and a quarter or one dollar and a half per lineal foot; and that since 1860 he has made no contracts at all for the use of the patent, having been absent the greater part of the time. Witness further proved that 5 per cent. on the former cost of erecting the bridges in question would have made his patent fees $10,573 97; in this case 5 per cent., at the most moderate estimate of present cost, would make it $21,147 94.

The defendant then offered in evidence the following papers subject to exception:

1. A certified copy of assignment from Joseph Stone, administrator of William Howe, to Daniel Stone, dated April 1st, 1861, in the terms following:

Assignment from Stone, adm'r, to Daniel Stone.

47 The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this first day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth.

[SEAL'S PLACE.] D. P. HOLLOWAY.

This indenture, made and executed on the first day of April, A. D. one thousand eight hundred and sixty-one, by and between Joseph Stone, administrator of the estate of W'm Howe, late of Springfield, State of Mass., deceased, on the one part, and Daniel Stone, of the city of Philadelphia, State of Pennsylvania, of the other part, witnesseth that whereas the said W'm Howe, on the twenty-eight day of August, A. D. one thousand eight hundred and forty-six, obtained letters-patent for a new and more useful method of constructing the truss-frames of bridges and other structures, as will more fully appear by reference to said letters-patent, also a renewal of said letters-patent obtained August the twenty-third, A. D. one thousand eight hundred and sixty, for the term of seven years; whereas the said Daniel Stone has this day

agreed to purchase the exclusive right to the use thereof within and for the States of New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia:

48 Now, in consideration of the sum of one dollar to me in hand paid by said Daniel Stone, the receipt whereof I do hereby acknowledge, I have bargained and sold, and by these presents do sell, assign, and convey, to said Daniel Stone, all my right, title, and interest as administrator in said invention and renewals as secured by letters-patent in and for the States of New Jersey, Pennsylvania, Delaware, and Maryland, and the District of Columbia, to be held and enjoyed by the said Daniel Stone, for the residue of the term of renewal, as fully as would be held and enjoyed by the inventor, said W'm Howe, or his legal heirs.

And should the original patents and improvements as aforementioned be again extended after the expiration of the present term, then and in that event the said Daniel Stone is to have and enjoy the rights aforesaid during such extension.

In witness whereof I have, as administrator, hereunto set my hand and seal this first day of April, A. D. one thousand eight hundred and sixty-one.

JOSEPH STONE.

Signed, sealed, and delivered in the presents of—
RODERICK BURT.
CHA'S A. BURNHAM.

2. Certified copies of agreement between Isaac R. Trimble and Daniel Stone, dated September 30th, 1846, and of assignment from John E. Shaw to Aaron B. Burton, dated June 11th, 1864, in the terms following:

Agreement—Trimble and Dan'l Stone.

49 The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-first day of November in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL'S PLACE.) ELISHA FOOTE.

Articles of agreement, made and concluded this thirtieth day of September, in the year of our Lord one thousand eight hundred and forty-six, by and between Isaac R. Trimble, of the city of Wilmington, State of Delaware, of the one part, and Daniel Stone, of Springfield, in the State of Massachusetts, of the other part.

Whereas the said Isaac R. Trimble has heretofore purchased and received an assignment for the right, title, and interest in certain improvements for "truss-frames of bridges as patented by William Howe, for which he, the said Isaac R. Trimble, agreed to pay the said William Howe, or his legal representatives, the sum of eighteen thousand dollars in the following payments, viz., two thousand dollars on the first day of December, 1845; two thousand five hundred dollars on the first day of December, 1846; three thousand five hundred dollars on the first

day of December, 1847; five thousand dollars on the first day of December, 1848; and five thousand dollars on the first day of December, 1849, further exclusive privilege of using said patent improve-
50 ments in the States of New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, and on the route of the Balto. & Ohio railroad; of which said payments, the first payment of two thousand dollars, and the one-half of the second payment of two thousand five hundred dollars has been made and satisfied. And whereas the said Isaac R. Trimble, for and in consideration of the premises and agreements hereinafter contained to be kept and performed by the said Daniel Stone, has contracted with and is about to sell and transfer to the said Daniel Stone the one moiety or half part of the right and interest as aforesaid by him purchased from the said William Howe:

Now, these articles of agreement witnesseth that the said Daniel Stone, for and in consideration of the covenants and agreements hereinafter contained to be kept and performed by the said Isaac R. Trimble, by these presents binds and obliges himself, his heirs, executors, and administrators to pay or cause to be paid to the said Isaac R. Trimble, or his legal representatives, one moiety or half part of the consideration money yet unpaid to the said William Howe as aforesaid for and on account of the said patent right as aforesaid whenever and at such times as the same shall become due and payable, and the said Isaac R. Trimble, in consideration of the said payments, promises, and agreements on the part of the said Daniel Stone as aforesaid, for and on the part of himself, the said Isaac R. Trimble, and his heirs, executors, and administrators, covenants and agrees, and by these presents doth covenant and agree, to sell and transfer, and doth hereby sell and transfer, unto the said Daniel Stone, his heirs, executors, and administrators, the one equal moiety or half part of all the right, title, claim, and
51 interest of him, the said Isaac R. Trimble, of, in, and to the patent right aforesaid, which he purchased as aforesaid of the said William Howe, the sale heretofore made to Reading Reka excepted.

And these articles of agreement further witnesseth that the said Isaac R. Trimble and the said Daniel Stone have joined, and by these presents do join, themselves together as copartners in the business of bridge-building under and in accordance with the rights and privileges acquired by the said Isaac R. Trimble from the said William Howe in his said patented improvements, and in all things thereunto belonging or appertaining, in the said States, the District of Columbia, and on the route of the Balto. and Ohio Railroad, as aforesaid. And the said parties respectfully bind themselves to each other to divide equally between them, share and share alike, all profits and emoluments accruing, or hereafter to accrue, from the said business of bridge-building as aforesaid, and to share equally in all losses, provided loss should happen in the said business; and further that it is the understanding and agreement of the parties to these presents that it shall be the duty of each of the said parties, which they severally promise and bind themselves to observe and keep, to keep and preserve fair and regular books of accounts, and propper vouchers of all ferlell and sihgular the monies received and expended by them respectively in and about the business of the said copartnership, which shall at all times be open to the inspection and examination of either party.

It is further understood and agreed that in case the parties, or either of them, decide to dissolve this copartnership it shall be done as
52 follows, all other plans failing, viz: The said I. R. Trimble shall name a sum of money which he will give or take for the one-

half of the joint interest as herein described, including payments on account pattent, and that then it shall be the duty of said Daniel Stone to decide whether he will sell or buy the said one-half the interest and privileges as acquired under the agreement with the said William Howe.

And it is further agreed that this contract may be dissolved as aforesaid on the expiration of six months after notice from either party of the wish so to do.

In witness whereof the said Isaac R. Trimble and the said Daniel Stone set their hands and affix their seals the day and year first herein written.

ISAAC TRIMBLE. [SEAL.]
DANIEL STONE. [SEAL.]

Signed, sealed, & delivered in the presence of—
R. H. MIDDLETON.
ISAAC C. BREWER.

[5c., J. E. S., rec., June 11, 1864.]

Rec'd July 23; recorded July 27, 1864.

Assignment from Shaw to Burton.

Whereas William Howe, late of Springfield, Massachusetts, deceased, did obtain letters-patent of the United States for certain new and useful improvements in the construction of truss-frames of bridges and other structures, which letters-patent bear date the tenth day of July, and also the third day of August, 1840; and whereas the said William Howe, by assignment dated the ninth day of July, 1844, duly recorded in the United States Patent Office, did assign unto Isaac
53 R. Trimble all the right, title, and interest which he, the said Howe, had in said invention, as secured to him by said letters-pattent, and also all the right, title, and interest which might thereafter be secured to him, the said Howe, for alterations and improvements in the same from time to time for and in the following States, viz.: New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia, as also for and upon that portion of the Baltimore and Ohio railroad then constructed, or thereafter to be constructed, in the State of Virginia, and in no other States or places; and whereas the said William Howe having departed this life, Joseph Stone, administrator of the estate of the said William Howe, deceased, afterwards, by instrument of writing, wherein is recited as is hereinabove recited, and also that the said William Howe having made certain alterations and improvements in the mode of constructing said bridges, obtained letters-patent therefor on the twenty-eighth day of August, 1846, and further that a special assignment of said letters-patent of 1846 might secure to the said Isaac R. Trimble his legal rights and tend to a more speedy adjustment of any disputed claim, did assign and confirm unto the said Isaac R. Trimble all right, title, and interest which the said William Howe might have assigned in, to, and under said letters-patent of 1846 in the States and District aforesaid; and whereas, by an instrument of writing dated the thirtieth day of September, 1846, the said Isaac R. Trimble did assign unto Daniel Stone one moiety or half part of the right, title, and interest in said improvements secured to him, the said Trimble, as aforesaid, and the said Isaac R. Trimble and Daniel Stone did enter into copartnership in
54 the business of bridge-building, as by said articles of agreement, intended to be forthwith recorded at the United States Patent

Office, reference being thereto had, will appear; and whereas the supreme court of Pennsylvania, sitting for the eastern district thereof, in a suit in equity wherein Joseph Stone, administrator of Daniel Stone, deceased, is complainant, and the said Isaac R. Trimble, defendant, said suit being of January term, 1864, No. 51, did, by order made on the twenty-sixth day of March, 1864, appoint John E. Shaw receiver of, with leave to sell, the partnership property, patent rights, &c., of the partnership late subsisting between the said Isaac R. Trimble and Daniel Stone, as in and by the records of said court, reference being had thereto, will appear; and whereas the said John E. Shaw, receiver, having given two weeks' notice thereof in two daily newspapers published in the city of Philadelphia, did on the twentieth day of April, 1864, expose to public sale, at the Merchants' Exchange in said city, all the right, title, and interest of the said partnership, in, to, and under the aforesaid letters-patent, and did then and there sell the same to Aaron B. Burton, of said city, for the price or sum of three hundred dollars, he being the highest bidder, and that the highest and best price bidden for the same:

Now, know all men by these presents that I, the said John E. Shaw, receiver, for and in consideration of the aforesaid sum of three hundred dollars, to me in hand paid by the said Aaron B. Burton, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have sold and assigned, and do hereby (according to the directions in said order contained, and by force and virtue thereof) sell and assign, unto the said Aaron B. Burton, all the right, title, and
55 interest of the partnership late subsisting between the said Isaac R. Trimble and Daniel Stone in and to the said inventions as secured to them by the said letters-patent and assignments; the same to be held and enjoyed by the said Aaron B. Burton, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters-patent have been granted or extended.

In testimony whereof I have hereunto set my hand and seal this eleventh day of June, A. D. 1864.

[SEAL.] JOHN E. SHAW, *Receiver.*

Sealed and delivered in the presence of us:

E. FREEMAN PRENTISS.
CHA'S B. CELFENSTEIN.

[5c., J. E. S., rec., June 11, 1864.]

Received, the day of the date of the hereinabove written deed poll, of the above-named Aaron B. Burton, the sum of three hundred dollars, being the full consideration money above mentioned.

JOHN E. SHAW, *Receiver.*

Witnesses at signing:

E. FREEMAN PRENTISS.
CHA'S B. CELFENSTEIN.

Rec'd July 23, & recorded July 27, 1864.

3. A certified copy of assignment by Joseph Stone, administrator of Daniel Stone, to Aaron B. Burton, dated March 6, 1865, in the terms following:

Assignment of Stone, adm'r, to Burton.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

56 This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, A. M. Stout, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[SEAL'S PLACE.] A. M. STOUT.

Whereas William Howe, late of Springfield, Massachusetts, did obtain letters-patent of the United States for a new and useful method of constructing the truss-frames of bridges and other structures, which letters-patent bear date the 28th day of August, 1846; and whereas the said W'm Howe having after the said date departed this life, Joseph Stone, administrator of the estate of said W'm Howe, did obtain an extension or renewal of said letters-patent; and whereas the said Joseph Stone, administrator as aforesaid, by instrument of writing under his hand and seal duly executed, dated the 1st day of April, 1861, did assign to Daniel Stone all the right, title, and interest of him, the said Joseph Stone, as administrator as aforesaid, in and to said invention, as secured by said letters-patent, and the said extension thereof, in and for the States of New Jersey, Pennsylvania, Delaware, and Maryland, and the District of Columbia; and whereas the said Daniel Stone, having after the date last aforesaid departed this life, letters of administration on his

57 estate were by the register of wills of Philadelphia County, Pennsylvania, granted to Joseph Stone, which letters bear date the 1st day of December, 1863, as by the records in the office of said register will more fully appear; and whereas Aaron B. Burton, of Philadelphia, Pennsylvania, is desirous of acquiring all the right, title, and interest which the said Daniel Stone in his lifetime had in and to said invention, as secured by said letters-patent, and any extension or extensions thereof:

Now, in consideration of the sum of one dollar, to me in hand paid by said A. B. Burton, the receipt of which sum is hereby acknowledged, I have assigned, transferred, and set over, and do hereby assign, transfer, and set over, unto the said Aaron B. Burton all my right, title, and interest as administrator of the estate of said Daniel Stone, deceased, in and to said invention, as secured by said letters-patent, and any extension or extensions thereof, in and for the States of New Jersey, Pennsylvania, Delaware, and Maryland, and the District of Columbia, the same to be held and enjoyed by the said Aaron B. Burton for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term of any extension or extensions of said letters-patent, as fully and entirely as the same would have been held and enjoyed by the said Daniel Stone, or his legal representatives, had this assignment and sale not been made.

In testimony whereof I have, as administrator of the estate of Daniel Stone, deceased, hereunto set my hand and seal this sixth day of March, 1865.

JOSEPH STONE, *Adm'r.* [SEAL.]

58 Signed, sealed, and delivered in the presence of N. WOODCOCK, GEO. BUCKLEY.

[5 cents, J. S., March 6, '68.]

Recorded May 29, '68.

4. A certified copy of the record of the supreme court of Pennsylvania in the case of Joseph Stone, administrator of Daniel Stone, vs. Isaac R. Trimble, in the terms following:

Record, &c.—Supreme Court of Pennsylvania.

Among the records and proceedings of the supreme court of Pennsylvania, in and for the eastern district of Philadelphia, of January term, 1864, No. 51, in equity, it is thus contained:

In the Supreme Court of Pennsylvania.—Docket entries.

JOSEPH STONE, ADMINISTRATOR OF THE ESTATE OF DANIEL STONE, *v.* ISAAC R. TRIMBLE. } Bill in equity.—Filed March 10th, 1864.

March 19th, 1864, affidavit of William Woodcock filed.
" " " " " John W. Murphy "

And now, March 26th, 1864, John E. Shaw, esq., is appointed receiver, with authority to sell, &c., security to be given in four thousand dollars, (4,000,) to be approved by the prothonotary. (See order filed.)

April 5th, 1864, receiver's bond filed in the sum of $4,000,
59 (surety Philip Quigley,) approved by proth'y, agreeable to the order of court.

April 25th, 1864, receiver's inventory filed.

June 11th, 1864, report and petition of receiver, praying confirmation of sale of patent rights, filed.

And now, June 11th, 1864, the report and petition of John E. Shaw, receiver, having been read and filed, which report sets forth the sale to Aaron B. Burton, of the right, title, and interest of the partnership late subsisting between the said Daniel Stone and Isaac R. Trimble in, to, and under letters-patent granted to William Howe on the 28th of August, 1846, and extended for seven years from the 23d day of August, 1860, and prays for confirmation of said sale, it is ordered that the said report be confirmed absolutely; and it is further ordered that the said John E. Shaw, receiver, having received the purchase-money, as in said report mentioned, do forthwith execute and deliver to Aaron B. Burton, the purchaser in said report named, in evidence of said sale, an instrument of writing in the words following, to wit:

Whereas William Howe, late of Springfield, Massachusetts, deceased, did obtain letters-patent of the United States for certain new and useful improvements in the construction of truss-frames of bridges and other structures, which letters-patent bear date the tenth day of July, and also the third day of August, 1840; and whereas the said William Howe, by assignment dated the 9th day of July, 1844, duly recorded in the United States Patent Office, did assign unto Isaac R. Trimble all the right, title, and interest which he, the said Howe, had in said invention, as secured to him by said letters-patent, and also all the right,
60 title, and interest which might thereafter be secured to him, the said Howe, for alterations and improvements in the same from time to time, for and in the following States, viz: New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia, as also for and upon that portion of the Baltimore and Ohio railroad then constructed, or thereafter to be constructed, in the State of Virginia, and in no other States or places; and whereas the said William Howe having departed this life, Joseph Stone, administrator of the estate of said

William Howe, deceased, afterwards, by instrument of writing, wherein is recited as is hereinabove recited, and also that the said William Howe, having made certain alterations and improvements in the mode of constructing said bridges, obtained letters-patent therefor on the twenty-eighth day of August, 1846, and further that a special assignment of said letters-patent of 1846 might secure to the said Isaac R. Trimble his legal rights, and tend to a more speedy ajustment of any disputed claim, did assign and confirm unto the said Isaac R. Trimble, all right, title, and interest which the said William Howe might have assigned in, to, and under said letters-patent of 1846, in the States and District aforesaid; and whereas, by an instrument of writing dated the thirtieth day of September, 1846, the said Isaac R. Trimble did assign unto Daniel Stone one moiety or half part of the right, title, and interest in said improvements secured to him, the said Trimble, as aforesaid, and the said Isaac R. Trimble and Daniel Stone did enter into co-partnership in the business of bridge-building, as by said articles of agreement, intended to be forthwith recorded at the United States
61 Patent Office, reference being thereto had, will appear; and whereas the Supreme Court of Pennsylvania, sitting for the eastern district thereof, in a suit in equity wherein Joseph Stone, administrator of Daniel Stone, deceased, is complainant, and the said Isaac R. Trimble, defendant, said suit being of January term, 1864, No. 51, did, by order made on the twenty-sixth day of March, 1864, appoint John E. Shaw, receiver of, with leave to sell, the partnership property, patent rights, &c., of the partnership late subsisting between the said Isaac R. Trimble and Daniel Stone, as in and by the records of said court, reference being thereto had, will appear; and whereas the said John E. Shaw, receiver, having given two weeks' notice thereof in two daily newspapers published in the city of Philadelphia, did on this twentieth day of April, 1864, expose to public sale, at the Merchants' Exchange in said city, all the right, title, and interest of the said partnership in, to, and under the aforesaid letters-patent, and did then and there sell the same to Aaron B. Burton, of said city, for the price or sum of three hundred dollars, he being the highest bidder, and that the highest and best price bidden for the same:

Now, know all men by these presents that I, the said John E. Shaw, receiver, for and in consideration of the aforesaid sum of three hundred dollars, to me in hand paid by the said Aaron B. Burton, at and before the sealing and delivery thereof, the receipt whereof is hereby acknowledged, have sold and assigned, and do hereby (according to the directions in said order contained, and by force and virtue thereof) sell and assign, unto the said Aaron B. Burton all the right, title, and interest of the partnership late subsisting between the said Isaac R. Trim-
62 ble and Daniel Stone in and to the said inventions as secured to them by the said letters-patent and assignments, the same to be held and enjoyed by the said Aaron B. Burton for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters have been granted or extended.

And it is further ordered that the said John E. Shaw, receiver, shall, after payment of the needful expenses of sale, retain the said purchase-money until the filing of his accounts.

June 13, 1864, affidavit of Cha's E. Warburton to publication of notice of sale of interest under letters-patent filed.

Jan. 24, 1866, account of John E. Shaw, receiver, filed.

June 9, 1866, master's report filed.

Nov. 24, " on motion of J. E. Gowen for comp'ts, the report of the master filed.

June 9, 1866, is confirmed absolutely, no exceptions having been filed thereto.

Feb. 28, 1866, on motion of J. E. Gowen for comp'ts, the account of J. E. Shaw, receiver, is referred to Robert N. Wilson, esq., as master, to report distribution of balance in the hands of said receiver.

July 15, 1867, report of master and examiner filed.

June 13, 1864, affidavit of Edmund J. Furlong, to publication of notice of sale of interest under letters-patent filed.

To the honorable the justices of the supreme court of Pennsylvania, sitting in equity for the eastern district:

JOSEPH STONE, ADMINISTRATOR OF THE ESTATE of Daniel Stone, deceased,
vs.
63 ISAAC R. TRIMBLE.

Joseph Stone, administrator of the estate of Daniel Stone, late of the city of Philadelphia, and State of Pennsylvania, deceased, brings this his bill against Isaac R. Trimble, formerly of said city of Philadelphia; and thereupon your orator complains and says, that, on or about the 30th of September, 1846, the said Daniel Stone entered into copartnership with the defendant in the business of building bridges, and on said day the said Trimble and D. Stone executed certain articles of copartnership, a copy of which articles is hereunto annexed, marked "A," and which your orator craves leave to refer to, as forming a part hereof.

And your orator further showeth the said copartnership business was carried on in said city of Philadelphia, and that the said defendant, on or about the 29th day of April, A. D. 1861, absconded to parts unknown, abandoning the said copartnership business, and took up arms, as your orator is informed and believes, against the government of the United States, became a major general in the so-called Confederate States army, was afterwards captured, and is now held at Johnston's Island in Lake Erie, as a prisoner of war by the U. S. government.

Your orator further shows that, to the best of your orator's knowledge and belief, the defendant has taken no part whatsoever in the management of said copartnership business since the said 29th day of April, A. D. 1861.

And your orator further shows that afterwards, to wit, on the twenty-sixth day of November, A. D. 1863, the said Daniel Stone de-
64 parted this life; and that afterwards, on or about the 1st day of December, A. D. 1863, administration of the goods and estate which were of the said Daniel Stone at the time of his decease was duly granted by the register of wills for Philadelphia County aforesaid unto your orator, who took upon himself that trust.

And your orator further shows that, as he is informed and believes, no settlement of the partnership accounts was ever made between the said defendant and the said "the late Daniel Stone," nor has any such settlement been made between the defendant and your orator.

And your orator further charges that, upon a true and just settlement of said copartnership accounts, it would appear that a considerable balance is due from the defendant to the estate of the said Daniel Stone, deceased, in respect of the said copartnership dealings.

And your orator further shows that the assets of said copartnership consist chiefly of a partial interest in certain letters-patent of the U. S., which letters patent were granted to one William Howe, on the 28th

day of August, 1846 A. D., for certain improvements in the truss-frames of bridges, said letters-patent having been afterwards, by certificate of the Commissioner of Patents duly endorsed thereon, extended for seven years from the 28th day of August, A. D. 1860.

And your orator further shows that, owing to the limited time for which patented inventions have any exclusive value to the owners thereof, the estate of the said Daniel Stone and the assets of the said copartnership are suffering irreparable loss from the non-user of said patented improvements, and from the lapse of the term for which said letters-
65 patent have been extended, and that they will continue to suffer loss, as aforesaid, unless the right, title, and interest of said late copartners in, to, and under said letters-patent can be sold or otherwise disposed of.

To the end therefore that the defendant may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written he is required to answer; that is to say:

1. Whether the said copartnership was formed as is charged, in pursuance of said articles of agreement dated September 30th, 1846.

2. Whether the defendant neglected the business of the said copartnership, and absconded himself from, and abandoned the same, on or about the 29th day of April, 1861, and whether the defendant took up arms against the government of the United States.

3. Whether the defendant is not largely indebted to the estate of the said Daniel Stone by reason of said copartnership.

4. Whether the property of said copartnership does not principally consist of a partial right under letters-patent originally granted to William Howe on the 28th day of August, A. D. 1846, and afterwards extended for seven years from the 28th day of August, A. D, 1860.

5. Whether the assets of the said copartnership are not suffering irreparable injury from non-user and from the lapse of the term
66 for which said letters-patent were extended.

And that an account may be taken of all and every the said late copartnership dealings and transactions until the time of the expiration thereof; and that the said defendant may be directed to pay to your orator what, if anything, shall, upon such accounts appear to be due from him to the estate of said Daniel Stone, deceased, your orator being ready and willing, and hereby offering, to pay to the said defendant what, if anything, shall appear to be due to him from the said joint concern; and that some proper person may be appointed to collect and receive all moneys which may be coming to the credit of the said late copartnership; and that the said defendant may in the mean time be restrained by the order and injunction of this honorable court from collecting and receiving any of the debts due and owing thereto; and that your orator may have such other and further relief, &c.

May it please your honors to grant unto your orator the commonwealth writ of subpœna to be directed to the said Isaac R. Trimble, thereby commanding him at a certain day, and under a certain pain to be thereon limited, personally to be and appear before your honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem meet.

JOSEPH STONE, *Administrator.*

67 The defendant is required to answer the interrogatories numbered 1, 2, 3, 4, 5.

CITY OF PHILADELPHIA, *ss:*

Joseph Stone, administrator of Daniel Stone, late of Philadelphia, and State of Pennsylvania, deceased, complainant in the foregoing bill, being duly sworn according to the law, deposes and says that the statements in the said bill contained are true, so far as the same are stated on his own knowledge, and that so far as he speaks from the information of others, he verily believes them to be true.

JOSEPH STONE, *Administrator.*

Sworn and subscribed this thirtieth day of December, A. D. 1863, before me.

JAMES McCAHEN, *Ald'r'n.*

[U. S. int. rev. st. affixed.]

"A."

Articles of agreement, made and concluded this thirtieth day of September, in the year of our Lord one thousand eight hundred and forty-six, by and between Isaac R. Trimble, of the city of Wilmington, State of Delaware, of the one part, and Daniel Stone, of Springfield, in the State of Massachusetts, of the other part.

Whereas the said Isaac R. Trimble has heretofore purchased and received an assignment for the right, title, and interest in certain improvements for truss-frames for bridges, as patented by William Howe, for which the said Isaac R. Trimble agreed to pay the said William Howe, or his legal representatives, the sum of eighteen thousand dollars, in the following payments, viz: Two thousand on the first day of De-
68 cember, 1845; two thousand five hundred dollars on the first day of December, 1846; three thousand five hundred dollars on the first day of December, 1847; five thousand dollars on the first day of December, 1848; and five thousand dollars on the first day of December, 1849, for the exclusive privilege of using said patent improvements in the States of New Jersey, Pennsylvania, Delaware, District of Columbia, and on the route of the Baltimore and Ohio railroad, of which payments, the first payment of two thousand dollars, and the one-half of the second payment of two thousand five hundred dollars has been made and satisfied. And whereas the said Isaac R. Trimble, for and in consideration of the premises and agreements hereinafter contained, to be kept and performed by the said Daniel Stone, has contracted with, and is about to sell and transfer to, the said Daniel Stone, the one moiety or half part of the right and interest as aforesaid by him purchased from the said William Howe:

Now, these articles of agreement witnesseth that the said Daniel Stone, for and in consideration of the covenants and agreements hereinafter contained, to be kept and performed by the said Isaac R. Trimble, by these presents binds and obliges himself, his heirs, executors, and administrators, to pay or cause to be paid to the said Isaac R. Trimble or his legal representatives, one moiety or half part of the consideration money yet unpaid to the said William Howe as aforesaid, for and on account of the said patent right as aforesaid, whenever and at such times as the same shall become due and payable; and the said
69 Isaac R. Trimble, in consideration of the said payments, promises, and agreements, on the part of the said Daniel Stone as

aforesaid, for and on the part of himself, the said Isaac R. Trimble, and his heirs, executors, and administrators, covenants and agrees, by these presents, doth covenant and agree, to sell and transfer unto the said Daniel Stone, his heirs, executors, and administrators, the one equal moiety or half part of all the right, title, claim, and interest of him, the said Isaac R. Trimble, of, in, and to the patent right aforesaid, which he purchased as aforesaid of the said William Howe, the sale heretofore made, Reading railroad excepted.

And these articles of agreement further witnesseth that the said Isaac R. Trimble and the said Daniel Stone have joined, and by these presents do join, themselves together as copartners in the business of bridge-building, under and in accordance with the rights and privileges acquired by the said Isaac R. Trimble from the said William Howe, in his said patented improvements, and in all things thereunto belonging or appertaining, in the said States, the District of Columbia, and the route on the Baltimore and Ohio railroad as aforesaid. And the said parties respectively bind themselves to each other to divide equally between them, share and share alike, all profits and emoluments accruing or hereafter to accrue from the said business of bridge-building as aforesaid, and to share equally in all losses, provided loss should happen in the said business; and further, that it is the understanding and agreement of the parties to these presents that it shall be the duty of each of the said parties, which they severally promise and bind themselves to observe and keep, to keep and preserve fair and regular books of accounts and proper vouchers of and for all and singular the monies received and expended by them respectively in and about the business of the said copartnership, which shall at all times be open to the inspection and examination of either party.

70

It is further understood and agreed that in case the parties, or either of them, decide to dissolve this copartnership, it shall be done as follows, all other plans failing, viz: The said Isaac R. Trimble shall name a sum of money which he will give or take for the one-half of the joint interest as herein described, including payments on account patent, and that then it shall be the duty of the said Daniel Stone to decide whether he will sell or buy the said one-half the interest and privileges as acquired under the agreement with the said William Howe; and it is further agreed that this contract may be dissolved as aforesaid, on the expiration of six months after notice from either party, if they wish to do so.

In witness whereof the said Isaac R. Trimble and the said Daniel Stone set their hands and affix their seals the day and year first herein mentioned.

(Signed) ISAAC R. TRIMBLE.
(Signed) DANIEL STONE.

Signed, sealed, and delivered in the presence of—
R. H. MIDDLETON.
ISAAC C. BREWER.

(Endorsement:) 51, January term, 1864, S. C. In equity. Jos. Stone, adm'r of Daniel Stone, deceased, vs. Isaac R. Trimble. Bill in equity. Filed Mar. 19, 1864.

Supreme court of P'a.—In equity.

71 STONE *vs.* TRIMBLE. } January term, 1864, No. 51.

William Woodcock, being duly sworn according to law, deposes and

says that he knows the defendant Isaac R. Trimble, who was formerly a partner of Daniel Stone, late of the city of Philadelphia, deceased; that on or about the 29th day of April, A. D. 1861, the said Trimble joined the rebellion against the United States government; that he afterwards became a major general in the so-called Confederate States service; was subsequently captured at the battle of Gettysburg; and is now detained at Johnson's Island as a prisoner of war by the United States government; all of which is true, to the best of deponent's knowledge and belief.

(Signed) WILLIAM WOODCOCK.

Sworn and subscribed this thirtieth day of December, A. D. 1863, before me.

JOHN WHITE, *Ald'r'n.*

[U. S. int. rev. st.]

(Endorsement:) Stone v. Trimble. 51, Jan'y T, 1864. Equity. S. C. In equity. Affidavit of William Woodcock. Filed March 19, 1864.

Supreme court of Penn'a.—In equity.

STONE *vs.* TRIMBLE. } Jan'y term, 1864, No. 51.

72 John W. Murphy, being duly sworn according to law, deposes and says that he knows the defendant Isaac R. Trimble; he was formerly a partner in the business of building bridges with the late Daniel Stone; that on or about the 29th day of April, A. D. 1861, said Trimble took up arms against the government of the United States; that he afterwards became a major general in the so-called confederate States army; was subsequently captured at the battle of Gettysburg, and is now detained at Johnson's Island, in Lake Erie, as a prisoner of war by the United States government; all of which is true, to the best of deponent's knowledge and belief.

(Signed) JOHN W. MURPHY.

Sworn and subscribed this thirtieth day of December, A. D. 1863, before me.

JOHN WHITE, *Ald'r'n.*

[U. S. int. rev. st.]

(Endorsement:) Stone v. Trimble. 51, Jan'y T, 1864. Equity. S. C. In equity. Affidavit of John W. Murphy. Filed March 19, 1864.

Saturday, March 26th, 1864.—At nisi prius, before Agnew, J.

JOSEPH STONE, ADMINISTRATOR OF THE Estate of Daniel Stone, dec'd, *vs.* ISAAC R. TRIMBLE. } Supreme Court, in equity. Jan'y term, 1864, No. 51.

73 And now, March 26th, 1864, bill and affidavits in the above case being filed, on motion of St. Geo. T. Campbell, of counsel for the complainant, it is ordered that John E. Shaw be appointed receiver of the partnership property, patent rights, outstanding debts, and effects of the late partnership of the said Daniel Stone and defend-

ant; such person appointed receiver first giving security, to be approved of by the prothonotary, in the sum of $4,000; that the said receiver shall, within thirty days, file an inventory of the estate coming into his hands, and pay over the same as this court may direct; and that the said receiver have leave to sell any of the partnership estate or effects at public sale in the city of Philadelphia, on giving two weeks' notice thereof in two daily newspapers published in the city of Philadelphia; and that the said receiver have leave to apply to this court from time to time for further orders and directions.

By the court.

DANIEL AGNEW.

(Endorsement:) No 51, Jan'y T, 1864. In equity. Joseph Stone, administrator of Daniel Stone, dec'd, vs. Isaac R. Trimble. Appointment of receiver, &c. Filed March 26, 1864.

Know all men by these presents that we, John E. Shaw and Philip Quigley, both of the city of Philadelphia, and State of Pennsyl
74 vania, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of four thousand dollars, ($4,000,) lawful money of the United States of America, to be paid to the said "The Commonwealth of Pennsylvania," her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by the presents, sealed with our seals, dated the fifth day of April, in the year of our Lord one thousand eight hundred and sixty-four, (1864.)

Whereas the said John E. Shaw was, on the 26th day of March, A. D. 1864, appointed receiver by the supreme court of Pennsylvania, in and for the eastern district thereof, to be the receiver of the partnership property, patent rights, outstanding debts and effects of the late partnership of Daniel Stone, deceased, and one Isaac R. Trimble; said appointment having been made by virtue of certain proceedings in said court, wherein Joseph Stone, administrator of the estate of Daniel Stone aforesaid, deceased, is complainant, and the said Isaac R. Trimble, defendant:

Now, the condition of this obligation is such, that if the above-named John E. Shaw, receiver as aforesaid, shall and do well, truly, and faithfully perform and fulfil all and singular the duties of receiver aforesaid, and well and truly account for and pay over all the moneys which may come into the hands, or be subject to the control, of him, as such receiver, and shall obey all the orders, direction, and decrees of the said court in the premises, then the foregoing obligation to be void; otherwise to be and remain in full force and virtue.

JOHN E. SHAW. [L. S.]
PHILIP QUIGLEY. [L. S.]

Sealed and delivered in the presence of us:
JAMES ROSS SNOWDEN.

75 April 5, 1864, bail justified and the sufficiency of Philip Quigley approved.

JAMES ROSS SNOWDEN, *Proth'y.*

(Endorsement:) 51, Jan'y T., 1864. In equity. Joseph Stone, adm'r of Daniel Stone, dec'd, vs. Isaac R. Trimble. Receiver's bond. Filed and approved April 5th, 1864.

Sup. court of P'a., E. dist.—Jan'y T, 1864, No. 51, in equity.

JOSEPH STONE, ADM'R OF DANIEL STONE, dec'd, *vs.* ISAAC R. TRIMBLE. } Inventory.

Filed in obedience to the court's order of March 26th, 1864, requiring an inventory to be filed within thirty days.

No corporeal property of any description belonging to the partnership late subsisting between the said Daniel Stone, dec'd, and the defendant has come into the possession of the receiver.

The receiver was informed that the said partnership was possessed of a certain right, title, and interest under United States letters-patent granted to William Howe, of Springfield, Massachusetts, on the 28th of August, 1846, extended for seven years from the 23rd of August, 1860, the same being for an improvement in truss-frames for bridges. This patent property was accordingly advertised for sale as directed in the said order of court and was sold for three hundred dollars, which sum is in the hands of the auctioneer.

76 (Signed) JOHN E. SHAW, *Receiver*

John E. Shaw, the receiver above named, being duly affirmed according to law, deposes and says that the statements in the foregoing inventory contained are just and true.

(Signed) JOHN E. SHAW.

Affirmed and subscribed this 25th of April, A. D. 1864, before me.
JAMES MCCAHEN, *Ald'r'n.*

(Endorsement:) Joseph Stone, adm'r of Daniel Stone, dec'd, vs. Isaac R. Trimble. Receiver's inventory. 51, Jan. T., 1864, sup. c't., in equity. Filed April 25, 1864.

In the supreme court of Pennsylvania for the eastern district.

JOSEPH STONE, ADMINISTRATOR OF DANIEL Stone, deceased, *vs.* ISAAC R. TRIMBLE. } Jan'y term, 1864, No. 51, in equity.

To the honorable the judges of said court:

The petition of John E. Shaw, receiver of the partnership property, patent rights, outstanding debts and effects of the late partnership of the said Daniel Stone and defendant, respectfully represents that, under and by virtue of an order of sale bearing date the twenty-sixth day of March, 1864, having first given two weeks' notice in two daily papers published in the city of Philadelphia, he did, by James A. Freeman,

77 auctioneer, at the Merchants' Exchange in said city, on the twentieth day of April, 1864, at twelve o'clock noon, expose to public sale all the right, title, and interest of the partnership late subsisting between the said Daniel Stone, deceased, and Isaac R. Trimble in, to, and under letters-patent of the United States, granted to William Howe, of Springfield, Massachusetts, on the twenty-eighth day of August, 1846, and extended for seven years from the twenty-third of August, 1860, the same being for an improvement in truss-frames for

bridges; the aforesaid right, title, and interest being sole and exclusive for the States of New Jersey, Pennsylvania, Delaware, and Maryland, the District of Columbia, and on the route of the Baltimore and Ohio railroad. Terms, cash at the sale. Whereupon Aaron B. Burton, of said city, became the purchaser of the aforesaid right, title, and interest in, to, and under said letters-patent, for the price or sum of three hundred dollars; he being the highest and best bidder, and that the highest and best price bidden for the same.

Your petitioner further represents that the said Aaron B. Burton duly paid over the said price or sum on the said day of sale.

Wherefore your petitioner prays that your honors will further order and decree that the aforesaid sale be confirmed and stand valid and stable to the said Aaron B. Burton, his executors, administrators, and assigns, forever; and your petitioner will ever pray, &c.

(Signed) JOHN E. SHAW, *Receiver.*

CITY OF PHILADELPHIA, *ss:*

John E. Shaw, the receiver above-named, being duly affirmed, according to law, deposes and says that the statements in the foregoing
78 petition contained are true.

(Signed) JOHN E. SHAW, *Receiver.*

Affirmed and subscribed this 27th day of May, A. D. 1864, before me.

JAMES McCAHEN, *Ald'r'n.*

[U. S. int. rev. st.]

(Endorsement:) 51, Jan'y term, 1864. S. C., in equity. Stone vs. Trimble. Report and petition of receiver praying confirmation of sale of patent rights. Filed June 11th, 1864.

In the supreme court of Pennsylvania for the eastern district.—In equity.

JOSEPH STONE, ADM'R OF DANIEL STONE, dec'd, *vs.* ISAAC R. TRIMBLE. } Jan'y T., 1864, No. 51.

And now, June 11th, 1864, the report and petition of John E. Shaw, receiver, having been read and filed, which report sets forth the sale to Aaron B. Burton of the right, title, and interest of the partnership late subsisting between the said Daniel Stone and Isaac R. Trimble in, to, and under letters-patent granted to William Howe on the 28th of August, 1864, and extended for seven years from the 23rd day of August, 1860, and prays for confirmation of said sale, it is ordered that the said report be confirmed absolutely, and it is further ordered that the said John E. Shaw, receiver, having received the purchase-money, as in said report mentioned, do forthwith execute and deliver to Aaron B.
79 Burton, the purchaser in said report named, in evidence of said sale, an instrument of writing in the words following, to wit:

(Here insert assignment marked "A 2," concluding with words "have been granted or extended.")

And it is further ordered that the said John E. Shaw, receiver, shall, after payment of the needful expenses of sale, retain the said purchase-money until the filing of his account.

(Endorsement:) Stone vs. Trimble. 51, Jan'y term, 1864. Supreme court, in equity. Decree confirming reported sale of patent rights, and ordering the form of deed to be executed by the receiver to the purchaser. Decree made per curiam. Filed June 11th, 1864. J. R. S.

In the supreme court of Pennsylvania for the eastern district.

JOSEPH STONE, ADM'N'R OF DANIEL STONE, dec'd, *vs.* ISAAC R. TRIMBLE.	January term, 1864, No. 51, in equity.

CITY OF PHILADELPHIA, *ss:*

Charles E. Warburton, being duly sworn according to law, deposes and says that a notice of an intended sale at public vendue of all right, title, and interest of the partnership late subsisting between the said Daniel Stone, deceased, and the said defendant in, to, and under letters-patent of the United States, granted to William Howe, of Springfield, Massachusetts, on the 28th day of August, 1846, and extended for seven years from the 23rd day of August, 1860, the same being for an improvement in truss-frames for bridges, was published
80 daily for two weeks, the first insertion thereof having been made on the sixth day of April, 1864, in the Evening Telegraph, a daily newspaper published in the city of Philadelphia; that the annexed printed matter was taken from said newspaper, and is a true copy of said notice as it appeared therein:

"*Positive sale of valuable patent right.*

"On Wednesday, April 20th, 1864, at 12 o'clock noon, previous to the sale of real estate at the Exchange, will be sold, without any reserve, all the right, title, and interest of the partnership late subsisting between Daniel Stone, deceased, and Isaac R. Trimble, in, to, and under letters-patent of the United States granted to William Howe, of Springfield, Massachusetts, on the 28th day of August, 1846, and extending for seven years from the 23d day of August, 1860, the same being for an improvement in the truss-frames for bridges; the aforesaid right, title, and interest of the said partnership being sole and exclusive for the States of New Jersey, Pennsylvania, Delaware, and Maryland, the District of Columbia, and on the route of the Baltimore and Ohio railroad.

"Terms, cash at the sale.

"By order of the supreme court of Pennsylvania for the eastern district.

"JOHN E. SHAW, *Receiver.*"

CHARLES E. WARBURTON.

Sworn and subscribed this 20th day of April, A. D. 1864, before me.
JAMES McCAHEN, *Alderman.*

[U. S. int. rev. st.]

81 (Endorsement:) No. 51, Jan'y term, 1864. Sup. court, in equity. Joseph Stone, adm'r of the est. of Daniel Stone, dec'd, vs. Isaac Trimble. Charles E. Warburton's affidavit to publication of notice of sale of interest under letters-patent. Filed June 13th, 1864.

In the supreme court of Pennsylvania for the eastern district.

JOSEPH STONE, ADM'R OF DANIEL STONE, dec'd, *vs.* ISAAC R. TRIMBLE.	January term, 1864, No. 51, in equity.

CITY OF PHILADELPHIA, *ss:*

Edward J. Furlong, being duly affirmed according to law, deposes and says that a notice of an intended sale at public vendue of all right, title, and interest of the partnership late subsisting between the said Daniel Stone, deceased, and the said defendant in, to, and under letters-patent of the United States, granted to William Howe, of Springfield, Massachusetts, on the 28th day of August, 1846, and extended for seven years from the 23d day of August, 1860, the same being for an improvement in truss-frames for bridges, was published daily for two weeks, the first insertion thereof having been made on the sixth day of April, 1864, in the North American and United States Gazette, a daily newspaper published in the city of Philadelphia; that the annexed printed matter was taken from the said newspaper, and it is a true copy of said notice as it appeared therein:

"By James A. Freeman, No. 422 Walnut street, above Fourth
82 street, positive sale of a valuable patent right.

"On Wednesday, April 20th, 1864, at 12 o'clock noon, previous to the sale of real estate at the Exchange, will be sold, without any reserve, all the right, title, and interest of the partnership late subsisting between Daniel Stone, deceased, and Isaac R. Trimble in, to, and under letters-patent of the United States, granted to William Howe, of Springfield, Massachusetts, on the 28th day of August, 1846, and extended for seven years from the 23d day of August, 1860, the same being for an improvement in the truss-frames for bridges, the aforesaid right, title, and interest of the said partnership being sole and exclusive for the States of New Jersey, Pennsylvania, Delaware, and Maryland, the District of Columbia, and on the route of the Baltimore and Ohio railroad.

"Terms, cash at the sale.

"By order of the supreme court of Pennsylvania for the eastern district.

"JOHN E. SHAW, *Receiver.*"

E. J. FURLONG.

Affirmed and subscribed this 20th day of April, A. D. 1864, before me.
JAMES McCAHEN, *Ald'r'n.*

[U. S. int. rev. st.]

(Endorsement:) No. 51, Jan'y term, 1864, Sup. c't, in equity. Joseph Stone, adm'r of estate of Daniel Stone, dec'd, vs. Isaac R. Trimble. Edward J. Furlong's affidavit to publication of notice of sale of interest under letters-patent. Filed June 13th, 1864.

83 Supreme court of P'a, E. dist.

JOSEPH STONE, ADMINISTRATOR OF DANIEL Stone, dec'd, *vs.* ISAAC R. TRIMBLE. } In equity, Jan. T., 1864, No. 51.

The account of John E. Shaw, receiver, (appointed by order of court in the above-entitled case.)

DR.

1864.

		Doll's. C'ts.
April	The accountant charges himself with the proceeds of sale of the partnership interest of the said Daniel Stone and Isaac R. Trimble, in certain letters-patent granted W'm Howe Aug. 28, 1846, extended for seven years from Aug. 28, 1860, for improvement in the truss-frames of bridges, as per inventory filed.....	$300

CR.

1864.		
	The accountant craves allowance for the following disbursements, viz:	
April 20.	By cash paid for two affidavits to publication of notice of sale.....	60
25.	" for affidavit to inventory filed.....	30
	" James A. Freeman for services as auctioneer and for advertisements.....	55 00
May 27.	" affidavit to return of sale.....	30
	" commissions of accountant.....	15 00
	" affidavit to this account.....	25
	costs of court.....	
	balance for distribution.....	228 55
		$300 00

CITY OF PHILADELPHIA, *ss:*

84 John E. Shaw, the accountant above named, being duly sworn according to law, deposes and says that the above-stated account, as to the terms of both charge and discharge thereof, is just and true.

J. E. SHAW *Receiver.*

Sworn and subscribed this day of , A. D. 186 , before me.

[U. S. stamp, 5 cts.]

I certify the above and foregoing to be a true and accurate copy of the whole record, proceedings, and docket entries in the above-stated case, so full and entire as the same remain on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the said supreme court this 20th day of November, A. D. 1868.

[SEAL'S PLACE.] JAMES ROSS SNOWDEN, *Prothonotary.*

[5-c'ts U. S. int. rev. stamp cancelled.]

I, James Thompson, chief justice of the supreme court of Pennsylvania, do hereby certify that James Ross Snowden was, at the time of signing the annexed attestation, and now is, prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this twentieth day of November, one thousand eight hundred and sixty-eight.

JAMES THOMPSON.

85 I, James Ross Snowden, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James Thompson, by whom the foregoing certificate was made and given, was, at the time of making and giving the same, and is now, chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania for the eastern district, at Philadelphia, this twentieth day of November, one thousand eight hundred and sixty-eight.

[SEAL'S PLACE.] JAMES ROSS SNOWDEN,
Prothonotary.

[5-ct's U. S. int. rev. stamp cancelled.]

5. Certificate of the appointment of Joseph Stone as administrator of William Howe, in the terms following:

Probate court.

COMMONWEALTH OF MASSACHUSETTS, *Hampden, ss:*

I, John Wells, esquire, judge of the probate court within and for the county of Hampden, hereby certify that William S. Shurtleff, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court, and has, by law, the custody of the seal, and all the records, books, documents, and papers of
86 or appertaining to said court, and that said certificate and attestation are in due form, and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this eighth day of January, in the year of our Lord eighteen hundred and sixty-two.

[SEAL'S PLACE.] JOHN WELLS,
Judge of Probate Court.

Probate court.

COMMONWEALTH OF MASSACHUSETTS, *Hampden, ss:*

I, William S. Shurtleff, register of the probate court for said county of Hampden, hereby certify that at a probate court, holden at Springfield, in and for said county, on the fourth Tuesday of September, in the year of our Lord one thousand eight hundred and fifty-two, Joseph Stone, of Springfield, in the county of Hampden aforesaid, was duly appointed administrator of the estate of William Howe, then late of Springfield, in said county of Hampden, deceased, intestate, and gave bond to the acceptance of the judge of such court, for the due performance of said trust, according to law.

I also certify that it appears by the records and files of said court, that said appointment is now in full force.

In witness whereof I have hereunto set my hand and the seal of said court this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL'S PLACE.] WILLIAM S. SHURTLEFF, *Register.*

6. Certificate of the appointment of Joseph Stone as administrator of Daniel Stone, in the terms following:

87

PHILADELPHIA CITY AND COUNTY, *ss:*

I, William A. Leech, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify and make known that on the first day of December, in the year of our Lord one thousand eight hundred and sixty-three, letters of administration on the estate of Daniel Stone, deceased, were granted unto Joseph Stone, having first given security well and truly to administer the same.

Given under my hand and seal of office this 26th day of May, 1868.

[SEAL'S PLACE.] WM. A. LEECH, *Register.*

[5-c'ts U. S. int. rev. stamp cancelled.]

PENNSYLVANIA, *City and County of Philadelphia, ss:*

I, Joseph Allison, esquire, president of the first judicial district of Pennsylvania, and presiding judge of the court of common pleas, orphans' court, and court of general quarter sessions of the peace for the city and county of Philadelphia, do certify that William A. Leech, by whom the annexed record, certificate, and attestation were made and given, and who in his own proper handwriting has thereunto subscribed his name and affixed his official seal, was, at the time of so doing, and now is, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, duly commissioned and qualified; to all
88 whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as thereout; and that the said record, certificate, and attestation are in due form, and made by the proper officer.

In testimony whereof I have hereunto set my hand the 26th day of May, eighteen hundred and sixty-eight.

JOSEPH ALLISON.

[5-c'ts U. S. int. rev. stamp cancelled.]

CITY AND COUNTY OF PHILADELPHIA, *ss:*

I, Fred. G. Wolbert, esquire, prothonotary of the court of common pleas for the city and county of Philadelphia, do certify that the Honorable Joseph Allison, esquire, by whom the foregoing attestation was made, and whose name is thereto subscribed, was, at the time of making thereof, and still is, president of the first judicial district of Pennsylvania, and president judge of the court of common pleas, orphans' court, and court of general quarter sessions of the peace for the city and county of Philadelphia, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the

seal of the said court the 26th day of May, eighteen hundred and sixty-eight.

[SEAL'S PLACE.] FRED. G. WOLBERT,
Prothonotary.

[5-c'ts U. S. int. rev. stamp cancelled.]

The plaintiffs then proved, by the said Isaac R. Trimble, that
89 Daniel Stone never made any of the payments stipulated to be paid by him in the agreement offered in evidence by the defendant; that, by common consent, the agreement between said Trimble and Daniel Stone, given in evidence as above, never went into operation in any way, because said Daniel Stone was unable to comply with any of his engagements made in said agreement, and left witness to pay, and witness was compelled to pay, the installments still due on the original purchase, which witness himself did; that said Stone never claimed any right or interest whatever during his life under that agreement, nor did he ever pretend to act under it, but, on the contrary, always afterwards recognized witness's exclusive right to the interest referred to in said agreement, and acted as witness's agent under a power of attorney, in constructing bridges thereunder, paying witness a part of the profits as a compensation for the privilege. The said witness further proved that he never was, nor were any of the plaintiffs, at any time, residents or citizens of Pennsylvania.

Whereupon the plaintiffs, by their counsel, prayed the court to instruct the jury as follows:

Plaintiffs' prayer.

The plaintiffs' pray the court to instruct the jury—

1. That if the jury believe from the evidence, that the agreement offered in evidence by the defendant, executed by & between Isaac R. Trimble & Daniel Stone, & bearing date the thirtieth day of , 1846, never went into effect & operation between the parties thereto, because of the inability & failure of the said Stone to comply with the
90 terms thereof on his part, & that the partnership therein contemplated was, for the same reason, abandoned by the common consent of the said parties, and the said agreement was held and treated by & between them, in all particulars, as inoperative & of no effect; and if the jury further believe that said Trimble, by reason of the failure of said Stone to pay the moneys due on the purchase of the original patent, as in said agreement stipulated, was compelled to pay, and did pay, the same, altogether himself, and that said Stone always, after the execution of said agreement, & notwithstanding the same, recognized the said Trimble as the sole owner of the patent right therein referred to, & acted only as his agent and attorney in regard thereto, & in recognition of his sole right therein, & not otherwise, & never caused or procured, or intended, the said agreement to be recorded, but died in 1862 or 1863, before the recording of the same, and without setting up the same, or pretending to have acquired any rights thereunder, then the said agreement is not to be regarded by the jury as passing any right or title to the said Stone which the defendant is entitled to set up, in connection with any other evidence in the cause, as a bar to the right of the plaintiffs to recover; provided the jury find the execution and delivery to the plaintiffs Anne C. Trimble & Georgiana Presstman, of the deed of 13 of May, 1861, produced by plaintiffs, & that the same was

recorded in the Patent Office on the 4th day of March, 1868, and on the 26th day of July, 1861, in the clerk's office of the superior court of Baltimore City.

91 And the defendant, by its counsel, prayed the court to instruct the jury as follows:

Defendant's prayers.

1. That to entitle the plaintiffs, on the issues joined between the parties, to recover damages against the defendant for the use, by the defendant, in the construction of its bridge across the Susquehanna River, of the improvement originally patented to William Howe on the 28th August, 1846, and extended by the Commissioner of Patents on the 23rd August, 1860, the burden is on the plaintiffs to shew that they had, or that some one or more of them had, an exclusive right to the use of the said improvement at the time and place of such use as aforesaid, by the said defendant.

2. That Isaac R. Trimble did not acquire a legal right, under the extension of the patent of 28th August, 1846, by force of the agreement, offered in evidence, between said William Howe and said Trimble, dated 9th July, 1846, or by force of the agreement, offered in evidence, between Joseph Stone, as the administrator of said William Howe, acknowledged on the 18th of August, 1854, and said Trimble, to the territory specified in said agreements respectively, for the term or any part of the term of said extension; and that the deed from said Trimble to Ann C. Trimble and Georgiana Prestman, dated 30th May, 1861, offered in evidence, did not pass to said grantees, in said last-mentioned deed, a legal title or right to the term, or any part of the term, of such extension, to
92 the territory, or any part of the territory, specified in said agreements, respectively.

3. If the court shall not grant the second prayer of the defendant; then the defendant prays the court to instruct the jury that if they shall find, from the evidence in the cause, that the original of the paper offered in evidence, dated 30th September, 1846, and purporting to be a copy of an agreement between said Isaac R. Trimble and Daniel Stone, was made and executed on the day of its date between said parties, then upon the true construction of said agreement, the said Trimble thereby parted with and passed to said Daniel Stone a moiety of his interest, whatever such interest may have been, which had been acquired by said Trimble, under said agreement between W'm Howe & said Trimble, dated July 9th, 1846; and that, in the absence of proof of a reassignment to said Trimble, by an instrument in writing, the jury cannot find that said Trimble, on the 30th day of May, 1861, had an exclusive legal right in the extended term of said patent of 28 August, 1846.

4. If the court shall not grant the defendant's second prayer, then the defendant, by its counsel, prays the court to instruct the jury that if they shall find, from the evidence in the cause, that such proceedings in equity were had in the supreme court of Pennsylvania, as shewn by the record which has been offered in evidence, in a suit instituted in said court by Joseph Stone, as administrator of Daniel Stone, & that said suit is still pending, & that sale was made, as stated in the report of the receiver appointed in said suit, then such sale passed to the said purchaser all and any interest which was in the said Isaac R. Trimble at the
93 time said receiver was appointed.

5. If the jury shall find the facts set forth in the 4th prayer, as

the hypothesis of that prayer, and shall not find, from the evidence in the cause, that either said Joseph Stone, the complainant in that suit, or the receiver, or the purchaser, had knowledge of the deed from Isaac R. Trimble to Ann C. Trimble and Georgiana Prestman, dated 30th May, 1861, and shall find that the same was not recorded in the Patent Office until March 4, 1868, then said deed, as between the grantees therein named and said purchaser, cannot operate to the prejudice of such purchaser.

6. If the jury shall find from the evidence in the cause, that said Joseph Stone, as administrator of William Howe, after he had obtained an extension of said patent of 28th August, 1846, made to Daniel Stone the assignment dated 1st April, 1860, a copy of which has been offered in evidence, then such assignment passed the legal right under such extension of said patent to the said Daniel Stone.

7. That if shall be held by the court that the plaintiffs are entitled to maintain this suit, then the plaintiffs are not entitled to recover damages for any infringements which took place more than three years before the commencement of this suit.

8. After the court had disposed of the several prayers, as above stated, the defendant, by its counsel, prayed the court to instruct the jury that there is no sufficient legal evidence in the cause from which they can find that the plaintiffs had such exclusive legal title as set forth in the defendant's first prayer.

94 And the court granted the said prayer of the plaintiffs, and the first and seventh prayers of the defendant, but refused to grant the other prayers of the defendant.

The defendant thereupon offered its 8th prayer, and prayed the court to instruct the jury accordingly, but the court refused to grant said 8th prayer, and rejected the same.

To which granting of the prayer of the plaintiffs, and which refusal to grant the 2nd, 3rd, 4th, 5th, 6th, and 8th prayers, respectively, of the defendant, the said defendant prayed leave to except, and that the court would sign and seal this its bill of exceptions, which is accordingly done this twenty-seventh day of November, A. D. 1868.

WILLIAM F. GILES. [SEAL.]

And now here at this day, to wit, the twenty-seventh day of November, in the year of our Lord 1868, the said Philadelphia, Wilmington and Baltimore Railroad Company produced to the said circuit court here the writ of the said United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit:

Writ of error.

95 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you,

between Isaac R. Trimble, and Ann C. Trimble, his wife, & Georgiana Presstman, plaintiffs, and the Philadelphia, Wilmington and Baltimore Railroad Company, defendants, a manifest error hath happened, to the great damage of the said "The Philadelphia, Wilmington and Baltimore Railroad Company," as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

96 Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 27th day of November, 1868.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

97 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, the transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Citation.

98 The United States of America to Isaac R. Trimble, & Ann C. Trimble, his wife, & Georgiana Presstman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein the Philadelphia, Wilmington and Baltimore Railroad Company are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Philadelphia, Wilmington and Baltimore Railroad Company, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Witness my hand this twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-eight.

WILLIAM F. GILES. [SEAL.]

Notice of the above citation acknowledged.
Dec'r 22d, 1868.

S. T. WALLIS, *Att'y for Pl'ffs.*

99 In testimony that the foregoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I hereunto

subscribe my name and affix the seal of the said circuit court, this fourth day of December, in the year of our Lord 1868.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 240. The Philadelphia, Wilmington and Baltimore Railroad Company, plaintiff in error, vs. Isaac R. Trimble, and Ann C. Trimble, his wife, and Georgiana Presstman. Maryland C. C. U. S.

Filed 23d June, 1869.

SUPREME COURT OF THE UNITED STATES.

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAIL ROAD COMPANY, PLAINTIFF IN ERROR.

vs.

ISAAC R. TRIMBLE, AND ANN C. TRIMBLE, HIS WIFE, AND GEORGIANA PRESSTMAN, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Statement and Points on the part of the Plaintiff in error.

The suit was brought, by the Defendants in error, as plaintiffs below, on the 2nd April 1868, claiming damages for the alleged infringment by the Defendant of Howe's patents for construction of truss frames of Bridges; to which patent the Plaintiffs below claimed title, as assignees, for the States of New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, and that portion of the Baltimore and Ohio Rail Road, located in Virginia. The amended declaration extends from page 3 to page 9 of the record. Issues were joined on the pleas of not guilty, and the Statute of limitations. A verdict was rendered in favor of the Plaintiffs for $12,500; and judgment was rendered thereon.

At the time, no question arose as to the validity or construction of the patents, nor was the use thereof denied. The patent right was used in the construction of certain bridges, built by the Defendant, in the years 1864, 1865 and 1866. The only question raised, in the Court below, involved the *title* of the Plaintiffs, and the *amount* of damages, if the Plaintiff should recover.

At page 19 of the Record, will be found a conveyance from Howe, the Patentee, to I. R. Trimble for the interest in two patents, dated, respectively, 10th July and 3rd August 1840, for

the territory aforesaid. This conveyance was made 9th July, 1844. Afterwards, on 28th August 1846, another patent was granted to Mr. Howe, for an *improvement* in the manner of constructing truss frames of bridges. Mr. Howe, having died, his administrator, Joseph Stone, by an instrument, acknowledged 18th September 1854, assigned said patent, of 28th August 1846, for the territory aforesaid, to said Trimble. Record 20. It does not appear, that this last instrument was recorded anywhere.

The patent of 28th August 1846, page 16, being for the term of 14 years from its date, expired on 28th August 1860. But it was extended, on the application of Joseph Stone, the administrator of the Patentee, for seven years, to wit, until 28th August 1867. It was during this extended term, that the bridges were built.

On the 30th of May 1861, Mr. Trimble, by a deed of that date, granted, bargained and sold "all his property and estate whatsoever and wheresoever, of every kind and description 'to the female Plaintiffs, in trust,' firstly, to pay his debts, and then to hold the property for the use and benefit of said Ann C. Trimble, and thirdly, to convey said property, or any part thereof, to such person, as might be designated or appointed by said Ann C. Trimble, by will or deed." This deed was acknowledged, on the day of its date, before a Justice of the Peace of Frederick County, Maryland; was recorded, on the 26th July 1861, in Baltimore City, and, in the Patent Office, on 4th March 1868.

At page 24 of the Record, will be found an agreement between Trimble and Daniel Stone, dated 30th September 1846, by which Trimble sold to said Daniel Stone one equal moiety, or half part, of all the right, title, claim and interest of him, said Trimble, in said Patent right; and by said agreement, said Trimble and said Daniel Stone, became *partners* in the business of bridge building, *under and in accordance with the rights and privileges*, acquired by said Trimble from said Howe; and it was further agreed, in case of dissolution, other plans failing, that Trimble should put a valuation on the one-half of the Patent right; and that said Daniel Stone should have the option to buy or sell. This assignment was recorded in the Patent Office, 27th July 1864.

The Record farther shows, page 29, that a suit in Equity was instituted by Joseph Stone, as administrator of said Daniel Stone, in the Supreme Court of Pennsylvania, for the Eastern District thereof, on the 10th of March 1864, touching the partnership business of said Trimble and said Daniel Stone; the same having been dissolved by the death of the latter; and in said suit, on 26th

March 1864, John E. Shaw was appointed Receiver of the partnership property; who sold and conveyed the interest in said Patent right to Aaron E. Burton. The conveyance to Burton is dated 11th June 1864, and was recorded in the Patent Office, 27th July 1864, and is at page 26 of the Record. And on page 28 of the Record, is an assignment from said Joseph Stone, as administrator of said Daniel Stone, to said Burton, dated 6th March 1865, conveying all his interest, as such administrator of Daniel Stone, in the said Patent right, and in the *extension* thereof.

By affidavits, filed in said suit in Equity, it was shewn, that Mr. Trimble, on 29th April 1861, joined the rebellion; became a Major General in the Confederate army; was captured at the battle of Gettysburg, and was at the time said affidavits were made, 30th December 1863, a prisoner of war at Johnson's Island, in Lake Erie. Record 35. It was upon the said Bill and affidavits, that Mr. Shaw was appointed Receiver, and sold and conveyed to Burton as aforesaid.

Mr. Trimble, being called as a witness for Plaintiffs, testified, (page 44,) that Daniel Stone never made the payments specified in said agreement; that he was unable to comply—that the agreement never went into operation in any way; that Daniel Stone in his lifetime, never claimed any right or interest, under said agreement; that witness made all the payments, that said Daniel Stone acted as agent of witness, in constructing bridges; paying witness a part of the profits, as a compensation for the privilege.

The Plaintiffs below thereupon offered one prayer, which was granted.

The Defendants offered eight prayers; the first and seventh of which were granted. The others were rejected. The Defendants excepted.

Upon reading over the Plaintiff's prayer it will be noticed, that it *assumes* that the Plaintiffs had shewn a legal title, under the deed of trust of 30th May 1861, provided the Jury should find its execution and delivery, *unless* the agreement of 30th September 1846, between Trimble and Daniel Stone, passed an interest in the patent right, to said Daniel Stone; and the object of the prayer was to destroy the effect of said agreement, if the Jury should find the hypothesis of that prayer.

Upon examination of the prayers of the Defendant, it will be seen, that they deny that Trimble, or any one claiming under him, had any legal interest in the extended term of the patent, for seven years, from 28th August 1860. But, that if he had such right, either under the agreement with the Patentee (Record 19,) or under the assignment from Joseph Stone, administrator

of the Patentee, (Record 20,) it was not a *legal* right, on which a suit at law could be maintained; and whatever that right may have been, legal or equitable, that a moiety thereof passed to Daniel Stone, under the agreement between Trimble and him, (Record 24;) and that the parol proof, offered by Plaintiffs, by the evidence of Mr. Trimble, was not admissible legal evidence, in this suit, to destroy said agreement, or to revest in said Trimble the title, if any, which had passed to said Daniel Stone. Further, that the assignment, made by Joseph Stone, as administrator of the Patentee, *after the extension had been granted,* to Daniel Stone of said patent right, for the territory aforesaid, during the period of such extension, passed the legal title to said Daniel Stone, in the patent right, for said extended term.

Before presenting the points, intended to be relied on, by the Plaintiff in error, the attention of the Court is respectfully called to the language of said contract (page 19) between Howe and Trimble. It applies to two patents, dated respectively, 10th July and 3d August 1840. The contract itself is dated 9th July 1844; and the covenant, as to farther rights, is expressly limited to "*alterations and improvements*" in the invention, secured by said patents of 1840; and the benefit of said alterations and improvements were to be enjoyed by said Trimble and his representatives "to the full end of the term for which said letters patent are or may be granted."

And in the assignment from Joseph Stone, as administrator of the Patentee, made after the patent of 28th August 1846, had been granted, (Record 20) the assignment was made, in terms, "FOR THE FULL END OF THE TERM for which said letters patent were issued or granted."

The Plaintiff in error will maintain, in argument, the following propositions:

1. The Plaintiffs below did not adduce any evidence of title in the extended term of the patent. The alleged infringements occurred during the said extended term. There is nothing in the agreement, nor in the assignment above referred to, which would justify the conclusion, that the parties had in contemplation the possible extension of the patents, or any of them. The Defendant's 2nd and 8th prayers ought to have been granted.

Wilson *vs.* Rousseau, 4 How. 682.
Wilson *vs.* Simpson, 9 Howard, 109.
Bloomer *vs.* McQwewan, 14 How. 539.
Hartshorn *vs.* Day, 19 How. 220.
Chaffee *vs.* Boston Belting Co. 22 How. 223.
Day *vs.* Union Rubber Co. 3 Blatchf. 491, 504.

2. Even if there had been, in the said agreement or said assignment, or in both, a covenant, providing for an interest in any extension, it would only, *as respects third parties*, have vested a mere equitable right. By estoppel, the subsequently accruing right feeding the estoppel—it might, in a suit *inter partes*, even at law, have clothed the covenantee with a legal right. But, however this might be in such case, it could not create a legal right, to be enforced by the covenantee, or his assigns, in an action at law, against a stranger to the covenant.

Hartshorne *vs.* Day, 19 Howard, 220.

3. But even if Trimble had an inchoate right, in the possible extension of the patent of 1846, his agreement with Daniel Stone (Record 24) passed to Daniel Stone *one-half* of said inchoate right; and of course, the Plaintiffs, (assuming said agreement to be operative,) would not have such exclusive title, as would enable them to maintain this suit.

4. The evidence of Mr. Trimble, as a witness, is not competent legal evidence to destroy said agreement; or to revest in him, said Trimble, the moiety, which he had transferred to said Stone. An assignment of a legal interest in a patent, or of an interest therein, can only be made by writing. Even if the facts, stated by witness, would avail in equity, as a ground for a decree, setting aside the deed; still, in a suit at law, they cannot annul the agreement.

Phil. & Trent. R. R. *vs.* Stimpson, 14 Pet. 461.

Troy Iron & Nail Fact. *vs.* Corray, 1 Blatchf. 472.

5. Without entering into any discussion of the merits of the suit, in the Supreme Court of Pennsylvania, it was shown, that it was still pending; and that said Court, by a Receiver, had taken the possession of the interest of said Trimble in said patent right, long before the commencement of this suit. Coming into question, collaterally, in this suit, comity requires that the action of said Court should not be declared a mere nullity in law. It was a proceeding in a Court of Equity; and partnership matters are properly cognizable in Equity. It was a case, in a matter, within its jurisdiction. The appointment of a Receiver is an ordinary exercise of power, for the purpose of preserving property, pending litigation; and it is the province of every Court, having possession of a cause, to decide for itself, whether, upon the state of case before it, it is expected to exercise the power. The averments of the Bill (page 31) presented a strong case for prompt interference.

WM. SCHLEY,
THOMAS DONALDSON,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

December Term, 1869. *No.* 240.

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAIL ROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ISAAC R. TRIMBLE, AND ANN C. TRIMBLE, HIS WIFE, AND GEORGIANA PRESSTMAN.

BRIEF OF THE DEFENDANTS IN ERROR.

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BRIEF OF THE DEFENDANTS IN ERROR.

This case was instituted in the Circuit Court of the United States, in and for the Maryland District, April 2, 1868, to recover damages for an alleged infringement of the patent rights of the Plaintiffs, as assignees, in an improvement designated as "Howe's improvement in the manner of constructing the truss frames of bridges and other structures." See Nar. page 2; and also amended Nar. page 3 of the Record.

Defendant pleaded not guilty and limitations.—(Page 9 Record.)

It was agreed between counsel that the same questions might be raised upon prayers to the Court as to the plea of limitations, as if the said plea had been demurred to.—Page 10.

The verdict of the jury was for the Plaintiff—damages $12,500. (Page 10.)

The claim of the Defendants in Error (the Plaintiffs below) rested upon the following state of case, proven at the trial.

On the third of August, 1840, a certain William Howe obtained a patent for the improvement in question. (See pages 11 to 13). He had previously, on the 10th of July, of the same year, obtained a patent on the same account, which was merged practically in that of August 3d. On the 9th day of July, 1844, he assigned to Isaac R. Trimble all his right in these two patents for certain States, including Pennsylvania, Delaware, and Maryland, where

the infringement sued for was alleged to have taken place. This assignment (page 19) was recorded July 9, 1844, (page 20), and conveyed Howe's rights in these words; (page 19), viz: "All the right, title, and interest which I have in said invention, as secured to me by said letters patent; and also all right, title, and interest which may be secured to me for alterations and improvements in the same from time to time." "The same to be held and enjoyed by the said I. R. Trimble, &c., to the full end of the term for which said letters-patent are or may be granted, as fully and entirely as the same would have bave been held and enjoyed by me, had this assignment and sale not have been made." On the 15th of September, 1854, Howe having died meanwhile, his administrator, Joseph Stone, in order to "secure to I. R. Trimble more perfectly his legal rights, and tend to a more speedy adjustment of any disputed claim," assigned to Trimble the same interest in the patent of 1846, which he held in the others. The assignment (page 20) recites that the alterations and improvements secured by the patent of 1846 already belong to Trimble, "who has used and paid for the same since the year 1846, as understood at the time." On the application of the same administrator, Stone, the patent of 1846 was extended for seven years from the 28th of August, 1860. (Page 18.) On the 30th day of May, 1861, Trimble executed a deed of "all his property and estate, whatsoever and wheresoever, of every kind and description," to the Defendants in Error, Anne C. Trimble, (his wife), and Georgiana Presstman, in trust; 1st. to pay his debts; 2d. for the benefit of Mrs. Trimble, and 3d. to convey to such persons as Mrs. Trimble might designate, by deed or will. (See page 21.) This deed was recorded on the 26th July, 1861, in the proper office in Baltimore City, but was not recorded in the Patent Office until March 4, 1868, (page 22) a short time before this suit was brought. The right of the Plaintiffs to recover rested, therefore, it will be seen, upon the ground that the assignment from Howe to Trimble passed Howe's interest in the extension of the patent of 1846, the alleged infringement having taken place pending such extension. To establish the fact and the extent of the infringement, the Defendants in Error gave the proof by witnesses, to be found on pages 22 and 23, which tended to maintain that part of their pretension, and was found by the jury to have done so satisfactorily.

The Plaintiff in Error (Defendant below) then gave in evidence (subject to exception) an assignment dated April 1st, 1861, from Howe's administrator, Joseph Stone, to a certain Daniel

Stone of Philadelphia, of all the administrator's interest in the patent of 1846, and its extension, for the States above-mentioned. When this assignment was recorded does not appear. (pages 23 and 24.) This was followed by proof of an agreement between Trimble and Daniel Stone, dated 30th September, 1846, and recorded July 27th, 1864. (Pages 24, 25, and 26.) Stone obligates himself to pay Trimble one-half of the consideration money remaining due from Trimble to William Howe, for the purchase of his patents, and Trimble binds himself, in consideration thereof, to sell and transfer, "and doth hereby sell and transfer," to Stone one equal half part of his interest in these patents. The agreement further witnesses that the parties have joined themselves as partners to carry on the business of bridge builders, "under, and in accordance with," the Howe patent-rights and privileges," &c.

Next followed (subject to the same exception) an assignment from a certain John E. Shaw, Receiver, (under proceedings hereinafter to be noted) to Aaron R. Burton, of all the interest of Daniel Stone and Trimble, as partners in the Howe patents. This assignment bears date June 11th, 1864, and was recorded on July 27th, 1864, being the same day on which the partnership articles above referred to were recorded, as has been stated. (Pages 26–7.)

The Plaintiff in error then produced an assignment from Joseph Stone, administrator of Daniel Stone, to the same Aaron B. Burton, dated March 6th, 1865, in which he transfers to the assignee all the interest of the deceased in the Howe Patents and extension, (p. 28.) This assignment was not recorded until May 29, 1868, after the institution of this action. It recites and the exemplification subsequently produced by the Plaintiff in Error (p. 43) shows that Daniel Stone died before December 1st, 1863, so that he was dead on July 27th, 1864, when the articles of agreement and partnership between him and Trimble, were put on record (p. 26.) In order to sustain the assignment from Shaw as Receiver, already referred to, the Plaintiff in Error then gave in evidence, (subject to the same exception,) a transcript of the record in an equity proceeding in the Supreme Court of Pennsylvania, instituted March 10th, 1864, (p. 29,) by Joseph Stone, administrator of Daniel Stone, against Trimble, as "formerly of said city of Philadelphia." It alleges a partnership between Daniel Stone and Trimble, and that the same was carried on in Philadelphia, and produces what it charges is a copy of the articles of partnership of September 30th, 1846. It then charges that Trimble, "on or about the 29th day of April, 1861, absconded to parts unknown, abandoning the said co-

partnership business, and took up arms, as your Orator is informed and believes against the government of the United States, became a major-general in the so-called Confederate States army, was afterwards captured, and is now held at Johnston's Island, on Lake Erie, as a prisoner of war by the United States government." It further charges that since April 29th, 1861, Trimble had taken no part (p. 31) in the management of the partnership business; that Daniel Stone died on November 26th, 1863, and that the Complainant had administered on his estate; that no settlement of the business had ever been had; that a large amount was due from Trimble to Daniel Stone's estate; that the assets of the firm consisted in part of an interest in Howe's Patents, *which had been extended for seven years from August 28th*, 1860; that great loss will result from lapse of time and non user, &c., unless the rights of the co-partnership should be disposed of, &c. (p. 32.) The Bill then requires the Defendant to answer, among others, (p. 32,) the 4th interrogatory, as to whether "the property of the partnership does not principally consist of a partial right under letters patent originally granted to William Howe, on the 28th of August, 1846, *and afterwards extended for seven years from the 28th of August*, 1860." The Bill then prays an account, injunction, Receiver, &c., and a subpœna against Trimble. It is sworn to by Joseph Stone, (p. 33.) No subpœna was ever issued, but on the production of two affidavits, (pp. 34, 35,) sustaining the allegations of the Bill as to Trimble's having gone into the Confederate army, and being then in prison at Johnson's Island, the Court, (Judge Agnew,) on March 26th, 1864, sixteen days after the filing of the Bill, appointed Mr. Shaw, Receiver, and ordered him to sell the partnership property. He filed an inventory, (p. 37,) in which the Howe Patent, as extended, was set down as the only assets of the partnership, and a sale of it for $300 was reported. He then filed a petition, (p. 37,) for the confirmation of the sale of the patent and extension to Burton, and on June 11, 1864, said sale was absolutely confirmed, and the Receiver directed (p. 38) to execute the assignment to Burton (p. 26) of the Howe Patent "to the full end of the time for which said letters patent have been extended," (p. 27.)

This remarkable proceeding, for which no warrant has been and it is hoped and believed none can be set up, under the law of Pennsylvania, establishes beyond controversy, that the interest claimed thereunder, which the Plaintiff in Error endeavored to set up below as a bar to the rights of Trimble and his assignees, confessedly embraced the extension of the patent. Indeed, unless Trimble and

Stone had been entitled to the extension, the suit would have had no foundation *quoad hoc*, inasmuch as the original Patent itself expired in 1860, four years before the Bill was filed. That the proceeding was fraudulent, is manifest on its face, in the sale, for $300, of a patent right of great value, as shown in the present case, and that too under a Bill filed to prevent the "irreparable loss" arising from its non-user. The singular fact also appears from the transcript, (p. 34,) that the articles of co-partnership between Trimble and Stone, filed by the Complainant, as an exhibit with his Bill, though in all other respects identical with the instrument filed in the Patent Office, and produced by the Plaintiffs in Error on the trial, do not contain the words of actual sale, which are contained in the latter instrument, to wit: the words, (p. 25,) "*and doth hereby sell and transfer*," but confine themselves to a mere agreement to sell, such as is consistent with the rest of the paper and its entire spirit and purpose.

The Plaintiff in Error then closed its case by producing evidence that Joseph Stone was appointed administrator of Howe on the fourth Tuesday of September, 1852, and of Daniel Stone on the 1st of December, 1863, (pp. 42, 3.):

The Defendants in Error, by way of rebutting evidence, then proved by Isaac R. Trimble that Daniel Stone never made any of the payments stipulated to be paid by him in the agreement offered in evidence by the Defendant; that, by common consent, the agreement between said Trimble and Daniel Stone never went into operation in any way, because said Daniel Stone was unable to comply with any of his engagements made in said agreement, and left witness to pay, and witness was compelled to pay, the instalments still due on the original purchase, which witness himself did; that Stone never claimed any right or interest whatever during his life under that agreement, nor did he ever pretend to act under it; but, on the contrary, always recognized witness' exclusive right to the interest referred to in said agreement, and acted as witness' agent under a power of attorney, in constructing bridges therennder, paying witness a part of the profits as a compensation for the privileges. The said witness further proved that he never was a resident or citizen, nor were any of the Plaintiffs, at any time, residents or citizens of Pennsylvania. (Page 44.)

The Defendants in Error presented but a single prayer, (page 44,) as follows, which the Court granted:

1. That if the jury believe, from the evidence, that the agreement offered in evidence by the Defendant, executed by and between Isaac R. Trimble and Daniel Stone, and bearing date the

thirtieth day of September, 1846, never went into effect and operation between the parties thereto, because of the inability and failure of the said Stone to comply with the terms thereof on his part, and that the partnership therein contemplated was, for the same reason, abandoned by the common consent of the said parties; and the said agreement was held and treated by and between them, in all particulars, as inoperative and of no effect; and if the jury further believe that the said Trimble, by reason of the failure of said Stone to pay the moneys due on the purchase of the original patent, as in said agreement stipulated, was compelled to pay, and did pay, the same altogether himself; and that said Stone always, after the execution of the said agreement, and notwithstanding the same, recognized the said Trimble as the sole owner of the patent right therein referred to, and acted only as his agent and attorney in regard thereto, and in recognition of his sole right therein, and not otherwise; and never caused or procured or intended the said agreement to be recorded, but died in 1862 or 1863, before the recording of the same, and without setting up the same or pretending to have acquired any rights thereunder, then the said agreement is not to be regarded by the jury as passing any right or title to the said Stone, which the Defendant is entitled to set up in connection with any other evidence in the cause, as a bar to the right of the Plaintiffs to recover; provided the jury find the execution and delivery to the Plaintiffs, Ann C. Trimble and Georgiana Presstman, of the deed of the 13th of May, 1861, produced by Plaintiffs, and that the same was recorded in the Patent Office on the 4th of March, 1868, and on the 26th day of July, 1861, in the Clerk's Office of the Superior Court of Baltimore City.

The Plaintiff in Error presented eight prayers, (pp. 45 and 46,) of which the Court granted the 1st and 7th, and refused the rest.

The second was to the effect, that Trimble did not acquire by Howe's assignment, or that of his Administrator, a legal title to the extension of the patent, and that the deed of trust executed by Trimble passed no legal title to the grantees.

The third claimed that the articles of co-partnership between Trimble & Stone passed Trimble's title to a moiety of his interest in the patents, and that in the absence of any proof of a reconveyance in writing (and of course in spite of the jury's believing Trimble's rebutting evidence on the point) Trimble had no exclusive legal right in the extended term of the patent.

The fourth affirmed the validity of the receivers deed to Burton, and that the proceedings in Pennsylvania and that deed divested Trimble's entire interest.

The fifth is a corollary to the fourth, and assumes that as the deed of trust was not recorded in the Patent Office when the proceedings in Pennsylvania took place, it cannot operate to Burton's prejudice if neither he, the Complainant nor the Receiver had any knowledge of it.

The sixth asserts that the assignment by Howe's Administrator to Daniel Stone passed the legal right under the extension to said Stone.

The seventh, touching limitations, was granted.

The eighth asked an instruction that there was no evidence in the case from which the jury could find that the Defendants in Error had an exclusive legal title to the use of the Howe improvement at the time of the infringement.

The exception (p. 46) as taken, appears to be subject to the objection sustained in Harvey *vs.* Tyler, 2 Wallace, 328, and preceding cases, being general and not specific.

POINTS OF THE DEFENDANTS IN ERROR.

The Defendants in Error will contend,

I.

That the assignment of August 3d, 1840, from Howe to Trimble (p. 19) of itself, and *a fortiori* with the confirmatory assignment from Howe's Administrator on September 18th, 1854, (p. 20) passed to Trimble a legal and exclusive right within the territory named to the patents original and extended, which right passed from Trimble to his grantees by his deed of May 3d, 1861, (p. 21).

Wilson *vs.* Rousseau, 4 Howard, 646.
Gaylor *vs.* Wilder, 10 Howard, 493, '4, '5.
Hartshorne *vs.* Day, 19 Howard, 220.
Gibson *vs.* Cooke, 2 Blatchford, 149.
Phelps *vs.* Comstock, 4 McLean, 355.
Case *vs.* Redfield, 4 McLean, 520.
Clum *vs.* Brewer, 2 Curtis, 506, '8.
Pitts *vs.* Hall, 3 Blatchford, 201.
Hodge *vs.* Hudson R. R. R. Co., 6 Blatchford, 89.

See also MSS. case of Daniel Stone *vs.* Piper, decided by the late Mr. Justice Grier, in Philadelphia, in which the identical question here in dispute was the sole point of controversy, and was determined in favor of the right of Trimble to the benefit of the

extension and against the right of Daniel Stone under the assignment from Howe's Administrator.

II.

The agreement between Trimble and Daniel Stone, even if it be taken to contain the words of absolute transfer, which are not in the copy filed with the Pennsylvania Bill in Equity, did not pass any title which precluded the recovery of the Plaintiffs under the facts proven in rebutter, and put before the jury by the prayer of the Defendants in Error, under which the verdict was found. The agreement was a private paper, *inter partes* only, and unrecorded during the lifetime of Stone and the term of the proposed partnership. The stipulated transfer of one half of the patent-right was purely incidental to the partnership, which never went into operation, and the paper itself remained, on the proof, in Stone's hands, a confessed *escrow,* under which he claimed nothing.

The rebutting evidence was introduced without objection, and even if it had been objected to, there could have been no valid ground for refusing to admit it as proof that the contract had never been consummated, and that its abandonment had been assented to and acted upon on both sides, from 1846 to Stone's death in 1863.

Emerson *vs.* Slater, 22 Howard, 41–2.
Lawrence *vs.* Dole, 11 Vermont, 549.
Leathe *vs.* Bullard, 8 Gray, 545.

This view appearing to dispose of the fourth point of the Plaintiff in Error, it is unnecessary to urge the other, equally conclusive, that even upon the theory of the effectiveness of the agreement in question to pass a moiety of the patent-right to D. Stone, the whole interest in it was, upon the showing of the Plaintiff in Error, part of the assets of the firm and the legal title was in Trimble as survivor.

III.

The whole proceeding in Pennsylvania, and the Receiver's deed executed under it, are mere nullities, of no effect and entitled to no respect. Not only was the equity suit a sham on its face, for reasons already assigned, but no subpœna was issued, no publication made, no notice whatever given, or pretended to be given, to the Defendant. It was founded, moreover, on the false

and fraudulent allegation that Trimble was "formerly of Philadelphia," while it is distinctly proven in this case (page 44) that he never was at any time a citizen or resident of Pennsylvania. Neither had the patent-right any locality in Pennsylvania, to give a jurisdiction, from its *situs*, which did not exist over the person of the Defendant. It was a mere personal right, and even as such it was specifically exercisable in other States as well as in Pennsylvania.

It will hardly be contended that a partnership is a *res sita*, giving jurisdiction as such to the local *forum*. The entire proceeding then is not only *ex parte*, but *coram non judice* as to Trimble, whose assignees and co-Plaintiffs were not even made parties.

Darcy *vs.* Ketchum, 11 How., 165.
Harris *vs.* Hardeman, 14 How., 339.
McGoon *vs.* Scales, 9 Wallace, 30.
Bischoff *vs.* Wethered, 9 Wallace, 814.

IV.

The Third Point of the Plaintiff in Error, founded on his first prayer, granted below, and his eighth prayer refused, cannot, it is submitted, be maintained as matter of law, admitting the facts assumed. While it is not denied that an assignee, in order to recover, where defence is properly taken, must have an exclusive right; yet, if the Plaintiff has such exclusive right jointly with another, the non-joinder of that other must be pleaded in abatement, as the omission of a proper co-Plaintiff is required to be, on familiar principles of pleading, in all actions purely *ex delicto*.

V.

The Seventh Prayer of Plaintiff in Error was not law, inasmuch as there was no application of limitations to patent suits until the passage of the Act of 1870, (ch. 230,) the 55th section of which prescribes a limitation of six years after the expiration of the patent or extension.

Law's Digest, 469, c. 1.

VI.

The proceeding in the Supreme Court of Pennsylvania concedes throughout that Trimble's interest covered the extended patent.

This admission is flatly made by Joseph Stone, (administrator of Daniel Stone,) the Complainant. It is part of the Court's decree prescribing the form of the Receiver's deed and is set forth in that deed as accepted and recorded by Burton, the purchaser. And it could not have been otherwise on the very showing of the Bill, for not only did the Complainant aver the non-user of the patent as a ground of irreparable injury, (which, of course, could only refer to the extended patent, the original one having expired,) but he charged that the partnership had gone on till Trimble left it, or about the 29th of April, 1861, which was eight months after the extension; the sole and exclusive business of the firm, meanwhile, being to build bridges, "under and in accordance with the rights and privileges acquired by Trimble from Howe," (page 25,) and none other. Nor can it be tolerated that the Plaintiff in Error, while relying upon the proceeding in which Joseph Stone, as administrator of Daniel, thus claims the extension to have been in Trimble and Daniel Stone, as partners, by virtue of their partnership agreement and Trimble's original rights, should still be permitted to claim that the same Joseph Stone, as administrator of Howe, had previously conveyed the extension to the same Daniel Stone, on April 1st, 1861, and had afterwards vested it in Burton, the vendee of the Receiver, by the deed of March 6th, 1865, executed by him, the same Joseph, in his capacity of administrator of Daniel, (page 28,) and by virtue of his own deed to Daniel, as aforesaid.

All these pretended outstanding rights are set up by the Plaintiff in Error, a conceded and sheer wrong-doer, to protect it from the penalties of a confessed infringement, for which no license is claimed to have been given it by the parties on whose rights it relies. It certainly is entitled to no favorable constructions.

B. C. PRESSTMAN,
S. T. WALLIS,
For Defendants in Error.

DATES.

1st Patent issued to Howe, July 10th, 1840.

2nd, " " " August 3rd, 1840.

Howe's assignment to Trimble, July 9th, 1844.

3rd Patent to Howe, August 28th, 1846.

Trimble's agreement with D. Stone, September 30th, 1846, not recorded till (after D. Stone's death) July 27th, 1864.

J. Stone's (administrator of Howe) confirmation to Trimble, September. 18th, 1854.

Patent extended for seven years, August 23rd, 1860.

Assignment of extension from J. Stone, Administrator of Howe, to Daniel Stone, April 1st, 1861.

Trimble's Deed of Trust to Co-Plaintiffs, May 30th, 1861. Recorded in Baltimore, July 26th, 1861; in the Patent Office, March 4th, 1868.

Daniel Stone died, November 26th, 1863.

Bill filed in Sup. Ct., Pa., in Equity, March 10th, 1864.

Decree appointing a Receiver, March 26th, 1864.

Sale made 20th April, 1864—ratified, June 11th, 1864.

Receiver's deed to Burton, June 11th, 1864. (Recorded July 27th, 1864.)

J. Stone, (Administrator of Daniel) assignment to Burton, March 6th, 1865. Not recorded till May 29th, 1868.

This suit brought, April 2nd, 1868.